

Exhibit 18



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Transcript of Pia Ellis, Volume 2

Date: January 3, 2024

Case: International Paper Company -v- Beazley Insurance Company, Inc., et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

- - - - -x
INTERNATIONAL PAPER COMPANY, :
Plaintiff, :
-v- : Case No.
: 22-02789-TLP-CGC
BEAZLEY INSURANCE COMPANY, :
INC., and ZURICH AMERICAN :
INSURANCE COMPANY, :
Defendants. :

- - - - -x
Continued Videotaped Deposition of PIA ELLIS
CONDUCTED VIRTUALLY
Wednesday, January 3, 2024
10:01 a.m.

Job No.: 519935

Pages: 1 - 187

Reported By: Brooklyn E. Schweitzer, RPR, CRR

1 Videotaped Deposition of PIA ELLIS,
2 conducted virtually.

3
4
5 *** ALL PARTIES ATTENDED REMOTELY. ***
6
7

8 Pursuant to Notice, before Brooklyn E.
9 Schweitzer, Registered Professional Reporter,
10 Certified Realtime Reporter, and Notary Public in
11 and for the Commonwealth of Pennsylvania.
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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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Also Present: Harold Rodriguez, Technician
Charlotte Forrest, Videographer
Mary Jane Palmer

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P R O C E E D I N G S

VIDEOGRAPHER: Here continues the
videotaped deposition of Pia Ellis in the matter
of International Paper Company v. Beazley
Insurance Company, et al., in the United States
District Court for the Western District of
Tennessee, Western Division, Case
No. 22-02789-TLP-CGC.

Today's date is January 3rd, 2024. The
time on the video monitor is 10:01 a.m. Eastern
Standard Time. The remote videographer today is
Charlotte Forrest representing Planet Depos.

All parties of this video deposition are
attending remotely. Would counsel please voice
identify themselves and state whom they represent.

MR. SYLVESTER: Yes. This is John
Sylvester of the law firm of K&L Gates along with
my colleagues Laura Veith and Nathan Townsend, and
we represent, as I said the Plaintiff,
International Paper Company, here today.

MR. MURPHY: Gene Murphy with Robinson &
Kole on behalf of Beazley Insurance Company along
with my colleague, William Daley.

VIDEOGRAPHER: The court reporter today is
Brooklyn Schweitzer representing Planet Depos.

10:01:23
10:01:24
10:01:27
10:01:31
10:01:35
10:01:37
10:01:39
10:01:43
10:01:50
10:01:54
10:01:56
10:01:58
10:02:00
10:02:02
10:02:04
10:02:06
10:02:10
10:02:19
10:02:21
10:02:21
10:02:24
10:02:27
10:02:31
10:02:33

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1	The witness will now be sworn.	10:02:34
2	(Oath stipulation read and agreed by	10:02:34
3	counsel and witness.)	10:02:34
4	PIA ELLIS, having been duly sworn testified as	10:02:34
5	follows:	10:02:34
6	EXAMINATION	10:03:24
7	BY MR. SYLVESTER:	10:03:24
8	Q Thank you. Good morning, Ms. Ellis. This	10:03:24
9	is a continuation of the deposition --	10:03:26
10	A Good morning.	10:03:28
11	Q -- of both you individually and you as a	10:03:28
12	corporate representative of Beazley Insurance	10:03:31
13	Company that commenced on December the 18th, 2023.	10:03:35
14	That was a few weeks ago. Have you had a	10:03:41
15	chance since that time to review the transcript of	10:03:44
16	your testimony that you gave on that first day on	10:03:46
17	December 18th?	10:03:49
18	A No.	10:03:51
19	Q Do you have any desire to make any changes	10:03:51
20	or clarifications or modifications of the	10:04:02
21	testimony that you gave on December 18th?	10:04:05
22	A No. No.	10:04:08
23	Q Did you do any additional preparation for	10:04:13
24	today's deposition -- that is between	10:04:15
25	December 18th -- and today?	10:04:20

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1	A I met with counsel yesterday.	10:04:22
2	Q Okay. Did you review any documents?	10:04:25
3	A Just the documents that were available	10:04:31
4	previously.	10:04:44
5	Q And can you just generally describe what	10:04:44
6	those documents were as you recall?	10:04:49
7	A The interrogatories.	10:04:51
8	Q Did you review the transcripts of	10:04:52
9	testimony of any of the witnesses that have given	10:04:56
10	deposition testimony in this case? Again, I'm	10:05:01
11	talking about --	10:05:03
12	A No.	10:05:04
13	Q -- from December 18th to the present.	10:05:04
14	A No.	10:05:08
15	Q And did you speak to anybody other than	10:05:09
16	counsel in preparation for today's session of the	10:05:12
17	deposition?	10:05:19
18	A I just advised my manager that the prior	10:05:19
19	deposition took place.	10:05:22
20	Q Okay. Did you talk about the substance of	10:05:24
21	the claim with anybody other than counsel in	10:05:27
22	preparation for your testimony here today?	10:05:30
23	A No.	10:05:32
24	Q When we last convened on December 18th,	10:05:33
25	2023, for the first session of your deposition, as	10:05:43

1	I recall, you stated that Beazley was still	10:05:47
2	investigating International Paper's claim for	10:05:49
3	coverage for employee theft in this case. Do you	10:05:59
4	recall that testimony?	10:06:02
5	A Yes, I do.	10:06:03
6	Q Okay. So now we're here January 3rd,	10:06:04
7	2024. Has Beazley made any decision regarding	10:06:06
8	whether they believe that International Paper's	10:06:11
9	employee theft claim is covered under the Beazley	10:06:16
10	policy?	10:06:19
11	A I'm sorry. Could you repeat that question	10:06:20
12	again?	10:06:21
13	Q Yeah. As you sit here today, now on	10:06:22
14	January 3rd, 2024, has Beazley made any decision	10:06:24
15	as to whether International Paper's employee theft	10:06:28
16	claim under the Beazley policy is covered?	10:06:33
17	A Beazley continues to evaluate the alleged	10:06:35
18	claim, alleged losses under the policy. We have	10:06:43
19	not made a final determination at this time.	10:06:47
20	Q Okay. And just to be clear, putting aside	10:06:49
21	the amount of damages or claimed loss, has Beazley	10:06:52
22	made a determination as to whether International	10:06:56
23	Paper's claim is covered at all, regardless of the	10:06:59
24	amount of the loss being calculated?	10:07:03
25	A We're continuing to evaluate whether there	10:07:06

1 has been an employee dishonesty with respect to 10:07:08
2 the insurance policy, their crime policy with 10:07:13
3 Beazley. 10:07:20

4 Q Okay. And when you say you're continuing 10:07:20
5 to evaluate, who is doing that evaluation? 10:07:22

6 A Within the claims organization. 10:07:24

7 Q Yes. Who within the claims organization 10:07:33
8 is doing that evaluation as of today? 10:07:35

9 A Well, myself along with the claims 10:07:40
10 management structure within Beazley. 10:07:46

11 Q And are those the same claims managers and 10:07:48
12 supervisors that you identified in your prior 10:07:50
13 session of the deposition? 10:07:52

14 A Yes. 10:07:53

15 Q You understand that fact discovery closes 10:07:53
16 next week in this case? Are you aware of that? 10:08:01

17 A Yes. 10:08:04

18 Q When does Beazley intend to make a 10:08:06
19 decision and communicate that decision to 10:08:11
20 International Paper as to whether the claim that 10:08:14
21 International Paper has made for employee theft is 10:08:19
22 or is not covered under the Beazley policy? 10:08:22

23 A Well, in my prior testimony, within the 10:08:25
24 near future, but we have not made a decision as of 10:08:37
25 right now with respect to if there has been an 10:08:40

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1 employee dishonesty under the policy language.

10:08:43

2 Q Are there any particular facts that you're
3 waiting to learn about one way or another that
4 will inform your decision as to whether to cover
5 the claim or not?

10:08:46

10:08:49

10:08:52

10:09:00

6 A Well, I understand that there's some
7 depositions that are scheduled for next week. We
8 look forward to that information as well.

10:09:01

10:09:06

10:09:10

9 Q Are there any particular depositions that
10 you believe are important to your decision? And
11 that is Beazley's decision as to whether to cover
12 the claim?

10:09:14

10:09:20

10:09:23

10:09:27

13 A Well, I understand that both -- well, Jag,
14 Mid-South, and DGS are scheduled for depositions
15 next week.

10:09:27

10:09:33

10:09:37

16 Q And are you aware that counsel for Jag,
17 Mid-South, and DGS have indicated that they will
18 plead the Fifth Amendment against
19 self-incrimination in response to any substantive
20 questions about this matter?

10:09:38

10:09:45

10:09:49

10:09:51

10:09:55

21 MR. MURPHY: The witness is instructed not
22 to disclose any attorney-client communications.
23 If that is the source of your information, you are
24 not to disclose it.

10:09:56

10:09:57

10:10:00

10:10:06

25 THE WITNESS: Beazley looks forward to

10:10:07

1	hearing the testimony of next -- from next week.	10:10:10
2	BY MR. SYLVESTER:	10:10:13
3	Q Right. And if it turns out that there is	10:10:13
4	no testimony because they plead the Fifth	10:10:17
5	Amendment against self-incrimination, will that	10:10:20
6	inform Beazley's decision one way or another	10:10:24
7	whether this is a covered claim of employee theft?	10:10:27
8	MR. MURPHY: Objection as to form.	10:10:30
9	A I can't speak to that. I -- we'd have to	10:10:31
10	see what the results are from next week.	10:10:35
11	Q Okay. Are there any other facts or	10:10:37
12	evidence that you're waiting to receive before	10:10:43
13	making a decision about whether this claim is	10:10:45
14	covered, the claim that International Paper first	10:10:47
15	put Beazley on notice of in December of 2019?	10:10:52
16	A Well, discovery is ongoing, and as I said,	10:10:55
17	there's some additional depositions that are	10:11:02
18	scheduled for next week, and we look forward to	10:11:04
19	having that additional information.	10:11:09
20	Q How soon after the close of discovery next	10:11:11
21	week would you anticipate that Beazley will make	10:11:15
22	its decision and communicate to IP whether it's	10:11:17
23	going to cover the claim?	10:11:20
24	A I can't give an exact date, but within the	10:11:22
25	near term.	10:11:29

1	Q And when you say within the near term, are	10:11:30
2	we talking days, weeks, months? Give me an idea	10:11:32
3	of what the near term means.	10:11:35
4	A Well, again, I can't give an exact time	10:11:37
5	frame, but I would say within the near term.	10:11:42
6	Q Within a week or two after the close of	10:11:49
7	discovery? Is that a reasonable interpretation of	10:11:50
8	near term?	10:11:54
9	MR. MURPHY: Objection as to form; asked	10:11:55
10	and answered.	10:11:57
11	A I would just say as I previously stated,	10:12:04
12	in the near term.	10:12:06
13	Q Okay. You can't be any more specific than	10:12:07
14	that?	10:12:12
15	MR. MURPHY: Same objection.	10:12:13
16	A No, not at this time.	10:12:17
17	Q All right. We put in the chat box	10:12:19
18	Exhibit 6, which is the answer of Beazley to	10:12:24
19	International Paper's complaint, including	10:12:32
20	affirmative defenses. Do you have that in the	10:12:34
21	chat box, and can you pull that up?	10:12:36
22	A Exhibit 6 or Exhibit 7? There's two.	10:12:40
23	Q Exhibit 6.	10:12:42
24	(Exhibit 6 was previously marked for	10:13:06
25	identification and is attached to the transcript.)	10:13:07

1	Q Tell me when you have it open.	10:13:07
2	A I have it open.	10:13:27
3	Q Okay. And can you go to Page 10 which is	10:13:28
4	the beginning of the affirmative defenses that are	10:13:30
5	stated by Beazley in response to International	10:13:34
6	Paper's complaint for coverage? Tell me when you	10:13:36
7	have Page 10.	10:13:39
8	A Okay. I'm on Page 10.	10:13:40
9	Q Okay. In our last session, I had asked	10:13:48
10	you some questions about the 15 affirmative	10:13:50
11	defenses that are listed on Pages 10, 11, 12, and	10:13:53
12	13 of Exhibit 6, Beazley's answer.	10:13:58
13	And you had indicated, if my notes are	10:14:02
14	correct, that Beazley was withdrawing its first	10:14:06
15	affirmative defense, failure to state a claim; is	10:14:11
16	that correct?	10:14:14
17	A Yes, that's correct.	10:14:14
18	Q Okay. And you also indicated that Beazley	10:14:17
19	was not pursuing, although not withdrawing,	10:14:22
20	affirmative defenses No. 5, 6, 9, 10, and 15; is	10:14:26
21	that correct?	10:14:32
22	A Let me just go back and check.	10:14:32
23	You said 5, 6 --	10:14:35
24	Q 5, 6 --	10:14:44
25	A -- 9?	10:14:45

1	Q And 15 are the ones that I had as -- you	10:14:47
2	had indicated previously when we last spoke on	10:14:52
3	December 18th that Beazley was not pursuing but	10:14:55
4	yet not withdrawing?	10:14:58
5	A Yes, that's correct.	10:15:00
6	Q Okay. And based on any developments in	10:15:04
7	the case since we last spoke on December 18th, is	10:15:09
8	Beazley -- has Beazley decided to withdraw any of	10:15:15
9	those five affirmative defenses, the fifth	10:15:18
10	affirmative defense, the sixth affirmative	10:15:25
11	defense, the ninth affirmative defense, the tenth	10:15:28
12	affirmative defense, or the fifteenth affirmative	10:15:33
13	defense?	10:15:37
14	A No.	10:15:38
15	Q So is your position with regard to 5, 6,	10:15:38
16	9, 10, and 15, Beazley is still not pursuing them	10:15:41
17	but yet not withdrawing them?	10:15:45
18	A Yes, that's correct.	10:15:47
19	Q Okay. So that leaves the following	10:15:54
20	affirmative defenses that Beazley is still	10:15:55
21	pursuing, as I understand it. If you take away	10:16:00
22	the first, the fifth, the sixth, the ninth, the	10:16:05
23	tenth, and the fifteenth affirmative defenses that	10:16:09
24	we just talked about, that leaves the second, the	10:16:12
25	third, the fourth, the seventh, the eleventh, the	10:16:17

1 twelfth, the thirteenth, and the fourteenth
2 affirmative defense.

3 Do I understand that Beazley is still
4 pursuing each of those affirmative defenses as of
5 this point?

6 A Yes, that is correct.

7 Q Okay. So let's start with the second
8 affirmative defense, which states that Plaintiffs
9 claims are barred in whole or in part by the terms
10 and conditions of the Beazley policy, all of which
11 are preserved and none of which are waived?

12 With regard to that second affirmative
13 defense that Beazley is still pursuing, what facts
14 does Beazley have to support the assertion of that
15 second affirmative defense?

16 A Well, at this time -- excuse me -- based
17 on current information, we don't have information
18 that would demonstrate that there was an employee
19 theft by Jag. We've not seen anything that
20 demonstrated that he received a financial benefit
21 from the alleged scheme.

22 Q Anything else?

23 A Or that there was anything to indicate
24 that there was a theft as defined under our
25 policy.

1 Q Okay. So you indicated that you haven't 10:17:57
2 seen any evidence that Jag received a financial 10:18:02
3 benefit from the alleged scheme; is that correct? 10:18:06

4 MR. MURPHY: Objection as to form. You 10:18:11
5 can answer. 10:18:12

6 A Yes, that's correct. 10:18:12

7 Q Now, we looked at the settlement agreement 10:18:14
8 in which Jag and Shiv settled the claims against 10:18:20
9 International Paper that were brought by 10:18:29
10 International Paper. Do you recall when we looked 10:18:31
11 at that settlement agreement during the first 10:18:32
12 session? 10:18:34

13 A Yes. 10:18:34

14 Q And you recall in that settlement 10:18:36
15 agreement Jag and Shiv agreed as part of the 10:18:41
16 agreement that some of the contract moneys that 10:18:46
17 International Paper had paid to DGS and Mid-South 10:18:50
18 were transferred to accounts controlled by Jag. 10:18:55
19 Do you recall that? 10:18:58

20 MR. MURPHY: Objection as to form. You 10:19:00
21 can answer. 10:19:01

22 A Can you pull up the document to that 10:19:02
23 section that you're referring to? 10:19:10

24 Q You don't recall that? 10:19:11

25 A Not that exact statement, no. 10:19:13

1 Q Okay. Let me ask the tech to -- if he
2 would pull up Exhibit 17 and post that in the chat
3 box.

4 (Exhibit 17 was previously marked for
5 identification and is attached to the transcript.)

6 Q Can you download Exhibit 17, if you would?

7 A I have it open.

8 Q Okay. Can you go to the bottom of Page 3
9 of that settlement agreement that we looked at a
10 couple of weeks ago in your first session? It was
11 a September 2022 settlement agreement and release
12 between International Paper on the one hand and
13 Jag and Shiv and DGS and Mid-South and some other
14 entities on the other hand.

15 Do you recall now looking at that
16 document?

17 A Yes, I recall the document.

18 Q Okay. And can you look at Paragraph 15 at
19 the bottom of Page 3 of that settlement agreement?

20 A Yes, I see it.

21 Q And you see it says the related parties,
22 and specifically Jag and Shiv, agree that DGS and
23 Mid-South received funds from IP pursuant to their
24 contracts with IP and its suppliers and further
25 agree that some of those funds were transferred to

1	accounts controlled by Jag.	10:21:06
2	Do you see that?	10:21:07
3	A I see that.	10:21:08
4	Q And do you see on the signature pages that	10:21:10
5	this settlement agreement is signed by Jag and	10:21:14
6	signed by Shiv on behalf of both himself, DGS, and	10:21:17
7	Mid-South?	10:21:22
8	A I do.	10:21:23
9	Q So isn't that evidence that Jag received a	10:21:26
10	financial benefit from the employee theft scheme;	10:21:31
11	that is that he was entered into contracts for IP	10:21:38
12	to pay money to DGS and Mid-South and some of that	10:21:41
13	money was funneled back to him? Isn't that	10:21:44
14	evidence that Jag received a financial benefit	10:21:48
15	from this arrangement?	10:21:50
16	MR. MURPHY: Objection as to form.	10:21:53
17	A Well, again, I stated previously we have	10:21:59
18	not seen any documentation with respect to that.	10:22:03
19	Q Well, isn't this documentation, their	10:22:05
20	admission that that in fact happened? Isn't that	10:22:09
21	documentation?	10:22:12
22	MR. MURPHY: Objection as to form.	10:22:13
23	A Again, we haven't received documentation	10:22:14
24	which demonstrates that he received a financial	10:22:20
25	benefit.	10:22:23

1	Q So you don't consider --	10:22:23
2	A Alleged scheme.	10:22:25
3	Q You don't consider this Exhibit 17 to be	10:22:28
4	documentation that Jag received a financial	10:22:31
5	benefit from the alleged employee theft scheme?	10:22:35
6	A It is a document, but it doesn't document	10:22:42
7	a financial benefit to him.	10:22:47
8	Q Well, what kind of document would you want	10:22:48
9	to see that would satisfy you that he received a	10:22:50
10	financial benefit from this arrangement where he	10:22:54
11	was signing contracts on behalf of International	10:22:59
12	Paper to his brother's company, and the money --	10:23:03
13	some of the money from those contracts being paid	10:23:07
14	to his brother's company was being funneled back	10:23:09
15	to him? What documentation do you want to see?	10:23:12
16	MR. MURPHY: Objection as to form.	10:23:15
17	A The current information does not	10:23:16
18	demonstrate that he received a financial benefit	10:23:24
19	from the alleged scheme.	10:23:31
20	Q Well, what documentation or information	10:23:33
21	would convince you that he did?	10:23:35
22	A We have not seen any bank records or any	10:23:37
23	financial documents indicating that he received a	10:23:46
24	financial benefit from the scheme, alleged scheme.	10:23:48
25	Q Have you subpoenaed any bank records or	10:23:55

1	tried to obtain any bank records?	10:23:59
2	A Well, we also understand that there's been	10:24:01
3	a full release of Jag as well, this particular	10:24:09
4	document.	10:24:15
5	Q Right. I'm just asking you, have you	10:24:15
6	attempted to obtain the bank records that you	10:24:22
7	seemingly need to see in order to satisfy yourself	10:24:29
8	that Jag received a financial benefit?	10:24:33
9	MR. MURPHY: Objection as to form.	10:24:41
10	A Well, the insured would need to provide	10:24:47
11	documentation to demonstrate its loss under the	10:24:49
12	policy.	10:24:53
13	Q Okay. International Paper has given	10:24:54
14	Beazley a copy of the settlement agreement, right?	10:24:57
15	A We have been provided a copy of it, yes.	10:24:59
16	Q And you're saying that Jag's signing a	10:25:03
17	document that said he received money from his	10:25:08
18	brother's company that was paid by IP to his	10:25:11
19	brother's company, that that's -- that doesn't	10:25:15
20	satisfy you that he received a financial benefit?	10:25:17
21	Is that your testimony?	10:25:20
22	MR. MURPHY: Objection as to form;	10:25:21
23	misleading.	10:25:24
24	A Can you repeat the question?	10:25:25
25	Q Yes. Is Beazley taking the position that	10:25:30

1 if International Paper provides a signed document 10:25:33
2 signed by Jag where he admits that money that IP 10:25:37
3 paid to Jag's brother's companies, DGS and 10:25:43
4 Mid-South, and some of that money was funneled 10:25:47
5 back to accounts controlled by Jag, that that is 10:25:50
6 not considered by Beazley to be evidence that he 10:25:54
7 received a financial benefit from this 10:25:57
8 arrangement? Is that your testimony? 10:25:59

9 MR. MURPHY: Objection as to form. 10:26:02

10 A The release itself doesn't demonstrate a 10:26:03
11 financial benefit to Jag. 10:26:13

12 Q With regard to -- 10:26:23

13 A Sorry. 10:26:43

14 Q -- that Beazley contends is a basis for 10:26:43
15 pursuing that second affirmative defense, that the 10:26:49
16 terms and conditions of the Beazley policy are 10:26:52
17 coverage for this claim? 10:26:57

18 A I'm sorry. Could you repeat that again, 10:27:01
19 please? 10:27:03

20 Q Right, yeah. Just going through the 10:27:03
21 second affirmative defense to try and determine 10:27:05
22 what facts Beazley asserts support its claim in 10:27:08
23 the second affirmative defense that International 10:27:14
24 Paper's coverage claim is barred in whole or in 10:27:18
25 part by terms and conditions of the Beazley 10:27:20

1 policy.

10:27:22

2 You gave one statement that you're not
3 satisfied that there was information supporting an
4 employee theft or that Jag received a financial
5 benefit. Is there any other -- are there any
6 other facts or information to support that
7 affirmative defense that you can identify as you
8 sit here today?

10:27:23

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9 A Well, as I stated previously, that we
10 haven't seen that the alleged conduct was unlawful
11 either.

10:27:45

10:27:49

10:27:53

12 Q And what would persuade you that the
13 alleged conduct was unlawful? What type of
14 information would you want to see that you haven't
15 already seen from all the hundreds of thousands of
16 pages of documents that IP has produced?

10:27:53

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10:28:03

10:28:05

10:28:09

17 MR. MURPHY: Objection; asked and answered
18 during the last session.

10:28:12

10:28:15

19 A You're asking what would be unlawful?

10:28:16

20 Q No, what evidence would persuade Beazley
21 that Jag's conduct here was unlawful other than
22 evidence that International Paper has provided to
23 Beazley to date in the last four years, including
24 all the documents and all the testimony of
25 witnesses? What else do you need or would you

10:28:34

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10:28:48

10:28:52

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1 need to satisfy you that Jag's conduct was
2 unlawful?

3 MR. MURPHY: Same objection.

4 A Well, again, I understand that these
5 actions occurred during the normal course of
6 business with the insured. Unlawful is also going
7 back to whether there was a theft.

8 Q When you say -- when you say these actions
9 were in the normal course of business, do you
10 believe it's within the normal course of business
11 for somebody in Jag's position to send business to
12 his brother's company and not disclose to anybody
13 at International Paper that he's doing business
14 with his brother's company and not disclose to
15 anybody at International Paper that some of the
16 money that International Paper is paying to his
17 brother's company is being funneled back to Jag's
18 accounts? Do you think that's the normal course
19 of business?

20 MR. MURPHY: Objection as to form;
21 misstates the evidence.

22 A Well, again, we haven't seen documentation
23 that he financially benefitted with respect to
24 Jag.

25 Q You understand under the settlement

1 agreement, Exhibit 17 that we just looked at, Jag
2 and Shiv paid a total of \$15 million back to
3 International Paper in addition to whatever they
4 had to pay in back taxes to the IRS.

5 Doesn't that indicate to you that Jag and
6 Shiv had received financial benefit from this
7 arrangement?

8 MR. MURPHY: Objection as to form; asked
9 and answered during the last session.

10 A Well, again, we have not seen
11 documentation to demonstrate that.

12 Q Well, you have documentation that they
13 paid \$15 million, right, to International Paper to
14 settle the civil and criminal charges that were
15 brought against them? You do know that, correct?

16 MR. MURPHY: Objection as to form.

17 A We do have a copy of the settlement
18 agreement, yes.

19 Q Do you doubt that they paid \$15 million to
20 International Paper?

21 A No.

22 Q So where do you think they got the
23 \$15 million from?

24 MR. MURPHY: Objection; asked and answered
25 during the last session.

1 A I couldn't say with certainty the source
2 of those funds.

3 Q Let's look at the third affirmative
4 defense. It says Plaintiff's claims are barred in
5 whole or in part to the extent that the, quote,
6 indirect or consequential exclusion in the Beazley
7 policy applies. This exclusion applies, quote,
8 the underwriters will not be liable for costs or
9 expenses arising out of indirect or consequential
10 loss of any kind except for covered expenses under
11 the expense coverage insuring the agreement, end
12 quote.

13 Do you see that third affirmative defense
14 on Page 10 of Exhibit 6?

15 A Yes, I do.

16 Q What facts or information does Beazley
17 have that would support the assertion of the third
18 affirmative defense?

19 A There were certain non-contractual
20 payments that IP made to majority suppliers that
21 were included as part of the claim.

22 Q Okay. And which non-contractual payments
23 are you referring to?

24 A I'm referring to the payment that the
25 insured made to the majority suppliers or invoices

1 or specialty chemicals that the insured paid 10:33:42
2 directly to the majority suppliers and not to 10:33:45
3 Mid-South or DGS. 10:33:50

4 Q Okay. Are those the amounts that 10:33:52
5 international paper paid to majority suppliers for 10:33:57
6 products they had sold to DGS and Mid-South but 10:34:03
7 DGS and Mid-South never paid for, and therefore IP 10:34:08
8 was settling the claim that those majority 10:34:12
9 suppliers had for payment of those chemical 10:34:15
10 products? Is that what you're referring to? 10:34:22
11 There's about \$2.7 million in IP's claim. Is that 10:34:26
12 what you're referring to? 10:34:30

13 MR. MURPHY: Objection as to form. You 10:34:32
14 can answer. 10:34:33

15 A I mean, I am referring to the roughly 10:34:34
16 2.7 million in payments. 10:34:36

17 Q Okay. So does this defense, this third 10:34:39
18 defense relate to any other aspect of 10:34:44
19 International Paper's claim, or is it restricted 10:34:47
20 to the 2.7 million of settlement payments that 10:34:50
21 International Paper made to majority suppliers to 10:34:53
22 satisfy invoices to DGS and Mid-South that DGS and 10:34:56
23 Mid-South had not paid? 10:35:02

24 A It would apply to those payments along to 10:35:03
25 any similar type of payments that the insured 10:35:12

1	made.	10:35:15
2	Q Are you aware of similar payments in	10:35:15
3	International Paper's claim other than the	10:35:17
4	2.7 million settlement payments made to majority	10:35:19
5	suppliers that this third affirmative defense	10:35:25
6	applies to?	10:35:28
7	A I don't recall offhand, but it would apply	10:35:29
8	to similar types of payments issued to third	10:35:42
9	parties.	10:35:45
10	There's also -- there were also some	10:35:46
11	commission payments that were included in the	10:35:48
12	claim presentation as well.	10:35:53
13	Q Are you talking about Tier 2 commission	10:35:55
14	amounts?	10:36:01
15	A Yes.	10:36:01
16	Q Are you saying that that's covered under	10:36:02
17	your third affirmative defense?	10:36:06
18	A It is.	10:36:08
19	MR. MURPHY: Objection as to form.	10:36:09
20	Q Okay. And why is that?	10:36:10
21	A The -- because they're commission payments	10:36:14
22	that were issued by a majority suppliers.	10:36:24
23	Q Right. You understand --	10:36:29
24	A And --	10:36:32
25	Q Sorry. Go ahead.	10:36:32

1	A Go ahead.	10:36:33
2	Q You understand that International Paper is	10:36:34
3	making a claim for overpayments that it made to	10:36:38
4	majority suppliers because of the commissions that	10:36:42
5	the majority suppliers had to make to DGS or	10:36:46
6	Mid-South? Do you understand that that	10:36:49
7	approximately 1.9 million are payments that	10:36:51
8	International Paper made to majority suppliers out	10:36:55
9	of its own funds?	10:36:58
10	MR. MURPHY: Objection as to form. You	10:37:01
11	can answer.	10:37:02
12	A Well, I understand that those are payments	10:37:02
13	that International Paper made to parties other	10:37:07
14	than DGS or Mid-South.	10:37:12
15	Q Correct. Those are payments that were	10:37:14
16	made to the majority suppliers that were inflated	10:37:19
17	because of the need for the majority suppliers to	10:37:25
18	pay commissions to DGS and Mid-South. Are you	10:37:32
19	saying those amounts, which are about 1.9 million,	10:37:34
20	are the subject of your third affirmative defense?	10:37:38
21	MR. MURPHY: Objection as to form. You	10:37:40
22	can answer.	10:37:42
23	A Yes.	10:37:42
24	Q And why is that?	10:37:59
25	MR. MURPHY: Objection; asked and	10:38:04

1 answered.

10:38:06

2 A Well, as stated previously, those are
3 payments that the insured made to entities other
4 than DGS or Mid-South.

10:38:08

10:38:10

10:38:16

5 Q And why is that significant if, in fact,
6 those were payments that International Paper had
7 to make because of the employee theft scheme?
8 What does it matter who they overpaid, whether
9 they overpaid DGS or Mid-South or whether they
10 paid the majority suppliers? Why does that make a
11 difference under the policy as to whether that's
12 recoverable loss?

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13 MR. MURPHY: Objection; asked and
14 answered.

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10:38:48

15 A Well, again, the exclusion itself is with
16 respect to indirect or consequential loss.

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10:38:55

17 Q Right.

10:38:58

18 A And those payments that you were just
19 referring to were not made to DGS or Mid-South.

10:38:59

10:39:02

20 Q Right. But where in the exclusion does it
21 say that payments have to be made to any
22 particular entity in the employee theft scheme in
23 order for that -- those payments to be recoverable
24 loss?

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25 A Well, the exclusion states the claims are

10:39:27

1 barred in whole or in part to the extent that 10:39:30
2 they're indirect or consequential. 10:39:34

3 Q So why are payments to DGS and Mid-South 10:39:37
4 not indirect or consequential but payments under 10:39:44
5 the same scheme made to the majority suppliers 10:39:48
6 arising out of that scheme? Why do you deem those 10:39:52
7 to be indirect or consequential? 10:39:56

8 MR. MURPHY: Objection as to form. 10:39:59

9 A Could you repeat your question again, 10:40:04
10 please? 10:40:06

11 Q Right. You seem to be saying that the 10:40:06
12 payments of the 2.7 million that IP made to settle 10:40:09
13 invoices with the majority suppliers to DGS and 10:40:14
14 Mid-South is different or that that falls within 10:40:19
15 this third affirmative defense of indirect or 10:40:22
16 consequential, and also that overpayments made to 10:40:25
17 the majority suppliers because of the commissions 10:40:29
18 that the majority suppliers had to pay to DGS and 10:40:32
19 Mid-South were also indirect and consequential, 10:40:36
20 and therefore fall within the third affirmative 10:40:40
21 defense; is that right? 10:40:43

22 Those two categories of IP's claim, you're 10:40:45
23 saying, are subject to the third affirmative 10:40:49
24 defense? 10:40:52

25 A Well, again, as stated previously, the 10:40:52

1 payments to majority suppliers the insured made,
2 they didn't make them to either DGS or Mid-South.

3 Q Right.

4 A They made them to the majority suppliers.

5 Q Right. We can all agree --

6 A The product received.

7 Q But where does it say that -- where in the
8 third affirmative defense or in that exclusion for
9 indirect or consequential loss, where does it say
10 that payments have to be made to any one
11 particular entity or another in order for that
12 exclusion to either apply or not apply? Because
13 you seem to be making the distinction between
14 payments under the scheme made directly to DGS or
15 Mid-South or payments made to majority suppliers
16 because of the scheme.

17 Where is it in the policy language of this
18 exclusion that makes that distinction?

19 MR. MURPHY: Objection as to form.

20 A Well, again, the exclusion does state the
21 underwriters should not be liable for losses
22 arising out of indirect or consequential loss of
23 any kind.

24 Q All right. So with regard to the
25 settlement payments that IP made to satisfy the

1 invoices that DGS and Mid-South did not pay, does
2 Beazley consider those to be indirect losses, or
3 does Beazley consider those to be consequential
4 losses under that exclusion?

5 MR. MURPHY: Objection as to form. You
6 can answer.

7 A Well, they appear to be payments that the
8 insured made for goods that they received.

9 Q Right. And you understand that IP had
10 already paid DGS and Mid-South for those same
11 goods, so now they're having to pay twice to avoid
12 getting sued by the majority suppliers.

13 So why is it that this exclusion applies
14 if they have to double pay for goods received?

15 MR. MURPHY: Objection as to form; asked
16 and answered.

17 A Again, we've included it to the extent it
18 applies to this particular matter with respect to
19 any indirect or consequential losses that have
20 been included as part of the claim.

21 Q And do you -- does Beazley consider those
22 settlement payments to the majority suppliers to
23 be indirect, or does it consider them to be
24 consequential under the terms of this exclusion?

25 MR. MURPHY: Objection; asked and answered

1 within the last couple minutes. It's almost the
2 exact same question, Counsel.

3 MR. SYLVESTER: I agree. I've been
4 waiting for an answer. You can sit here --

5 MR. MURPHY: She gave you an answer. You
6 don't like it.

7 MR. SYLVESTER: It's not a question of
8 liking it. I just want an answer.

9 BY MR. SYLVESTER:

10 Q Which one is it? Is Beazley contending
11 that that payment is indirect and therefore
12 excluded, or is Beazley contending that it's
13 consequential and therefore excluded?

14 A There's a potential application with
15 respect to both.

16 Q What's the difference between the two,
17 indirect and consequential, in that exclusion?

18 MR. MURPHY: Objection as to form.

19 A Well, a consequential loss would be
20 something that is as a result of a potential loss
21 that's covered under the policy, and indirect is
22 with respect to if something was a direct -- not a
23 direct loss to the insured.

24 Q As regards to commissions that were paid
25 by the majority suppliers that required

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10:46:15

1 overpayment by IG to the majority suppliers to 10:46:18
2 cover the costs of those commissions, does Beazley 10:46:22
3 consider those to be indirect losses or 10:46:24
4 consequential losses as those terms are used in 10:46:27
5 this third affirmative defense? 10:46:31

6 MR. MURPHY: Objection; asked and 10:46:34
7 answered. You've already gotten the answer to 10:46:35
8 what's the difference. She's told you potentially 10:46:37
9 both. 10:46:40

10 MR. SYLVESTER: That was with regard to 10:46:42
11 the other category, Gene. I'm asking about a 10:46:43
12 different category loss. She didn't answer. 10:46:47

13 THE WITNESS: Actually, my response was to 10:46:51
14 both previously. 10:46:53

15 BY MR. SYLVESTER: 10:46:57

16 Q So you're saying both amounts, the 2.7 and 10:46:57
17 the 1.9, Beazley considers both to be indirect and 10:47:01
18 to be consequential losses under the third 10:47:05
19 affirmative defense? Is that your testimony? 10:47:10

20 MR. MURPHY: Objection; misstates the 10:47:12
21 testimony. Close, but it misstates the testimony. 10:47:14

22 You can answer. 10:47:17

23 A Well, as I'm indicating previously, 10:47:19
24 there's the potential for both of those buckets, 10:47:24
25 the 2.7 and the 1.9, and certainly any others that 10:47:31

1 fall into a similar category, to be both indirect
2 or consequential.

3 Q When you say a potential, have you not
4 made a decision about that one way or another?

5 A We're continuing to evaluate the claim at
6 this time. Within Beazley.

7 Q Okay. Let's look at the fourth
8 affirmative defense. The fourth affirmative
9 defense says Plaintiff's claims are barred in
10 whole or in part to the extent that the voluntary
11 exchange or purpose exclusion in the Beazley
12 policy applies.

13 This exclusion provides, and I quote,
14 liable for loss or expenses arising out of the
15 insured knowingly having given or surrendered
16 money, securities, or property in any exchange or
17 purchase with a third party, not in collusion with
18 an employee, provided that those exclusions shall
19 not apply to loss under the money orders and
20 counterfeit paper currency fraud insuring
21 agreement.

22 So with regard to the fourth affirmative
23 defense asserting the voluntary exchange or
24 purchase exclusion, what are the facts or
25 information which Beazley has to support the

1 assertion of this affirmative defense regarding
2 International Paper's coverage claim?

3 A The payments that were made based on the
4 information that we've seen were made voluntarily
5 by international paper in the procurement of the
6 specialty chemicals.

7 Q You mean the payments made to DGS and
8 Mid-South were made voluntarily? Is that your
9 assertion for this affirmative defense?

10 A Yes, that is correct.

11 Q Is it Beazley's contention that
12 International Paper knowingly paid DGS and
13 Mid-South payments knowing that those companies
14 were known and controlled by Jag's brother and
15 that Jag's brother's company was funneling money
16 back to Jag? Do you think that that was a
17 voluntary decision by International Paper by
18 anybody other than Jag to do that?

19 MR. MURPHY: Objection as to form.

20 A Well, again, the payments that were made
21 for the purchase of the chemicals were made
22 voluntarily by International Paper.

23 Q Isn't it the case that any sort of
24 kickback scheme, that if a company is paying a
25 third -party contractor and some of that money is

1 being kicked back to purchasing agent, that that's
2 employee theft even though money is, in fact,
3 being transferred to a third party? Doesn't that
4 always happen that way?

5 MR. MURPHY: Objection as to form.

6 A I couldn't speak to -- to that. I'm only
7 addressing this claim.

8 Q Well, but you testified that you've
9 handled many, many employee theft claims in your
10 career. Are you saying that an employee scheme
11 where there is payments made by a company
12 controlled by the purchasing agent to a third
13 party and that third party kicks back money to the
14 purchasing agent, that that can't be covered under
15 the Beazley commercial crime policy language
16 because the payment was, in fact, made by the
17 company to the third party? Is that your
18 testimony as to how that exclusion operates?

19 MR. MURPHY: Objection as to form;
20 misstates the testimony.

21 A Well, again, I'm only here to address this
22 claim.

23 Q Well, you're here in your individual
24 capacity as well as a representative of Beazley,
25 and so I'm asking you in your experience, are you

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10:52:26

1 saying that this exclusion, this voluntary 10:52:29
2 exchange or purchase exclusion, would preclude 10:52:34
3 coverage for any sort of kickback scheme where a 10:52:37
4 purchasing agent is using its -- his purchasing 10:52:40
5 authority to send his employers money to a third 10:52:44
6 party and that third party then kicks back money 10:52:47
7 to the purchasing agent? You're saying this 10:52:50
8 exclusion would prevent that from being employee 10:52:52
9 theft under the policy? 10:52:55

10 MR. MURPHY: Objection as to form; 10:52:57
11 incomplete hypothetical. 10:53:01

12 A Potentially. 10:53:08

13 Q It's potentially excluded, but would it be 10:53:09
14 potentially covered as well in that scenario that 10:53:16
15 I just asked you for? 10:53:19

16 MR. MURPHY: Same objection. 10:53:21

17 A Each claim has unique facts and 10:53:23
18 circumstances, so I couldn't say with certainty in 10:53:29
19 that hypothetical scenario. 10:53:36

20 Q Well, in this case, if Jag is authorizing 10:53:38
21 payment to DGS and Mid-South, his brother's 10:53:47
22 company, and IP is making those payments and some 10:53:53
23 of that money is getting funneled back to Jag, 10:53:56
24 you're saying that that kind of a scheme is 10:53:59
25 excluded under the voluntary exchange or purchase 10:54:04

1 exclusion because IP is actually sending money to
2 a third party and that can't be employment theft?
3 Is that Beazley's position about how that
4 exclusion operates?

10:54:07

10:54:10

10:54:14

10:54:16

5 MR. MURPHY: Objection as to form.

10:54:18

6 A Can you repeat the question, please?

10:54:23

7 Q Is Beazley asserting that its voluntary
8 exchange or purchase exclusion applies in this
9 case simply because Jag was able to direct
10 International Paper to send money to his brother's
11 company at DGS and Mid-South, and that the mere
12 act of International Paper sending money to Jag's
13 brother's company, that that prevents any claim
14 for employee theft under this policy?

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10:54:49

10:54:56

15 MR. MURPHY: Objection as to form. You
16 can answer.

10:55:00

10:55:01

17 A Well, again, these were voluntary payments
18 that were made in the purchase of various
19 specialty chemicals.

10:55:01

10:55:14

10:55:16

20 Q Why do you say they were voluntary
21 payments by international paper when these
22 payments were made in violation of multiple
23 company purchasing requirements, conflicts of
24 interests were not disclosed, amounts that were
25 paid were not -- were increased unilaterally by

10:55:17

10:55:22

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10:55:42

1 Jag in the SAP system, some of the payments made
2 to DGS or Mid-South were never the subject of any
3 contract?

4 Why were you saying that these were
5 voluntary payments by International Paper when Jag
6 was controlling these payments against company
7 policy?

8 MR. MURPHY: Objection as to form.

9 A Again, as stated previously, they were
10 payments that were made for the procurement of the
11 various specialty chemicals.

12 MR. MURPHY: Mr. Sylvester, when you get a
13 chance, we've been going about an hour. If we
14 could take a break, let me know when. But I don't
15 know if we're at a good breaking point here.

16 MR. SYLVESTER: Yeah. Let me just finish
17 this point, and then we'll take a break.

18 BY MR. SYLVESTER:

19 Q You understand, Ms. Ellis, that
20 International Paper was not aware, nobody other
21 than Jag was aware that he was doing business with
22 his brother's company when he was recommending and
23 directing contracts to DGS and Mid-South? Would
24 you agree with that?

25 A Would I agree with -- what is the

1 question?

10:57:15

2 Q Yeah. Would you agree with the fact that
3 other than Jag, nobody at International Paper knew
4 that they were dealing with Jag's brother's
5 companies, DGS and Mid-South, when those contracts
6 for the purchase of specialty chemicals were
7 approved and were operating?

10:57:15

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10:57:39

8 MR. MURPHY: Objection as to form.

10:57:44

9 A We understand that that's what's been
10 reported to Beazley.

10:57:45

10:57:52

11 Q Well, does Beazley have any reason to
12 believe that anybody at IP knew that DGS and
13 Mid-South were companies that were under control
14 by Jag's brother?

10:57:54

10:57:57

10:58:03

10:58:06

15 MR. MURPHY: Objection as to form; asked
16 and answered during the last session.

10:58:10

10:58:12

17 A We're continuing to evaluate that piece.

10:58:17

18 Q I understand you're evaluating, but as you
19 sit here today near the close of discovery, do you
20 have any evidence to demonstrate that anybody at
21 International Paper other than Jag knew that
22 International Paper is doing business with Jag's
23 brother's companies, DGS and Mid-South?

10:58:21

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10:58:35

10:58:39

24 MR. MURPHY: Same objection. It's not
25 fair to ask her the same questions from the last

10:58:42

10:58:44

1 session that she's already answered looking for a 10:58:47
2 different answer. That's been addressed, Counsel. 10:58:51

3 MR. SYLVESTER: I don't think so, plus 10:58:53
4 there's been additional investigation in the last 10:58:55
5 couple of weeks. So I don't know whether there's 10:58:58
6 any new information that this witness has that she 10:59:01
7 didn't have, but I'm just going through these 10:59:05
8 affirmative defenses to see what evidence Beazley 10:59:07
9 believes supports the affirmative defenses. 10:59:12

10 So I would ask -- 10:59:16

11 MR. MURPHY: Fair enough. That's fair 10:59:20
12 enough. I mean, you can't say that in response to 10:59:21
13 my objection and not just let me say something. 10:59:23

14 That's fair enough, but the last time, you 10:59:26
15 know, there was reference during your questions 10:59:28
16 about, you know, photos that were supposedly 10:59:30
17 taken, you know, at a family event with the -- the 10:59:32
18 supervisor or the manager of Jag. 10:59:35

19 I mean, this has been addressed. 10:59:37

20 MR. SYLVESTER: I don't -- I don't think 10:59:39
21 so. I don't think I've asked this specific 10:59:41
22 question, but let me ask it again. 10:59:43

23 BY MR. SYLVESTER: 10:59:45

24 Q Are you aware of any evidence that anybody 10:59:45
25 at International Paper knew that they were doing 10:59:52

1 business with Jag's brother's companies owned and 10:59:57
2 controlled by Jag's brother; that is DGS and 11:00:01
3 Mid-South? 11:00:06

4 MR. MURPHY: Same objection. 11:00:07

5 A Again, as stated previously, we're 11:00:08
6 continuing to evaluate. 11:00:11

7 Q Your counsel has asked for a break, so 11:00:16
8 we're going to contend that break. 11:00:20

9 A Okay. 11:00:22

10 VIDEOGRAPHER: We are going off the 11:00:22
11 record. The time is 11:00 a.m. 11:00:24

12 (A recess was taken.) 11:00:25

13 VIDEOGRAPHER: We are back on the record. 11:10:54
14 The time is 11:10 a.m. 11:10:56

15 BY MR. SYLVESTER: 11:10:58

16 Q Ms. Ellis, again, we're looking at the 11:10:59
17 answer and affirmative defenses of Beazley in 11:11:03
18 response to Plaintiff International Paper's 11:11:07
19 complaint, Exhibit 6. 11:11:10

20 Can you look at the seventh affirmative 11:11:10
21 defense asserted by Beazley on Page 11 of 11:11:13
22 Exhibit 6? Tell me when you have it. 11:11:17

23 A I have it. 11:11:25

24 Q So in this affirmative defense, Beazley 11:11:26
25 states that Plaintiff's claims for attorneys' 11:11:31

1 fees, expenses, and costs in this action are 11:11:33
2 barred by the legal fees, costs, or expenses 11:11:34
3 exclusion in the Beazley policy. 11:11:37

4 This exclusion provides, quote, the 11:11:40
5 underwriter shall not be liable for loss or 11:11:43
6 expenses incurred or paid by an insured in 11:11:46
7 defending or prosecuting any legal proceeding or 11:11:49
8 claim provided that this exclusion shall not apply 11:11:52
9 to the coverage provided under the expense 11:11:55
10 coverage insuring agreement, unquote. 11:11:58

11 Do you see that defense? 11:12:04

12 A Yes, I do. 11:12:05

13 Q What facts or information does Beazley 11:12:06
14 have to assert this set of affirmative defense in 11:12:08
15 connection with International Paper's coverage? 11:12:14

16 A Well, again, we haven't made a coverage 11:12:21
17 determination at this time. We're still 11:12:24
18 evaluating that. 11:12:27

19 But with respect to the expense coverage, 11:12:30
20 insuring agreement does require Beazley's consent 11:12:37
21 prior to incurring fees that may apply within the 11:12:40
22 expense coverage insuring agreement. 11:12:45

23 Q Okay. Well, you've seen International 11:12:49
24 Paper's loss, which was submitted years ago. What 11:12:55
25 aspects of that monetary claim for coverage is 11:13:00

1 Beazley contending may be excluded under this 11:13:04
2 legal fees, costs, and expense exclusion in the 11:13:07
3 policy? 11:13:10

4 A Well, again, the policy does require 11:13:11
5 consent prior to incurring -- prior to use of the 11:13:17
6 expense coverage, and then in this case, the 11:13:21
7 insured did not request to obtain Beazley's 11:13:25
8 consent prior to incurring various fees on this 11:13:29
9 particular matter. 11:13:32

10 And then separately, some of the fees that 11:13:35
11 were in cost expenses and so forth that were 11:13:40
12 incurred were in response to various subpoena 11:13:44
13 requests and document requests for the criminal 11:13:56
14 case, and those types of expenses, such as 11:14:00
15 prosecuting any legal proceeding, are -- are 11:14:09
16 barred with respect to legal fees, costs, or 11:14:15
17 expenses exclusion under the policy. 11:14:19

18 Q Okay. I think I hear two different -- two 11:14:23
19 answers. I want to dive into each of them. 11:14:27

20 First of all, which fees or expenses, 11:14:31
21 legal fees or expenses are you saying that Beazley 11:14:34
22 did not consent to, and therefore they're not 11:14:36
23 recoverable under the proof of loss submitted by 11:14:40
24 International Paper? What fees and expenses are 11:14:45
25 you talking about? 11:14:47

1 A Well, the consent is really insurers
2 requesting consent from Beazley.

3 Q Well, for example, as you know,
4 International Paper filed legal proceedings
5 against Jag and Shiv and the related companies in
6 order to seek reimbursement for amounts stolen
7 under this employee theft scheme.

8 And as a result of that pursuit, Jag,
9 Shiv, and DGS and Mid-South, IP was able to
10 receive in settlement \$15 million.

11 However, as you know, with regard to
12 pursuing that, it wasn't -- it wasn't a pursuit
13 for free. It cost money to pursue those entities
14 and persons' legal fees in order to obtain that,
15 and IP is subtracting the cost of pursuing Jag and
16 Shiv from the recovery to get a net recovery of
17 less than \$15 million when you take out the legal
18 fees that it incurred in order to obtain that
19 \$15 million settlement payment.

20 Are you saying that those legal fees that
21 IP expended to get the \$15 million should not be
22 an offset against the settlement payment of 15
23 million?

24 MR. MURPHY: Objection as to form.

25 A Well, again, as stated a few minutes ago,

1 the policy does require Beazley's consent with
2 respect to the use of the expense coverage
3 insuring agreement.

4 Q Okay. I'm not talking about expense
5 coverage. I mean, we'll talk about that separate.

6 I'm talking about the legal fees that IP
7 paid to Butler Snow to pursue Jag and Shiv and
8 Mid-South and DGS that resulted in this settlement
9 payment of \$15 million.

10 As you know, under its claim,
11 International Paper is subtracting from that 15
12 million the legal fees that it cost to get that 15
13 million, and so that it's a net settlement payment
14 of less than 15 million.

15 Are you saying that it's not properly
16 deductible from the 15 million in costs that the
17 legal fees, which were somewhere in the amount of
18 \$844,000, are you saying that Beazley doesn't
19 agree that International Paper can reduce that 15
20 million settlement by the amount of legal fees
21 incurred to get it in order to have a net recovery
22 of 14.15 million as opposed to 15 million?

23 MR. MURPHY: Objection as to form.

24 A If I'm understanding your question,
25 question, this exclusion is with respect to loss

1 or expenses incurred -- as it states, incurred or
2 paid by an insured in defending or prosecuting any
3 legal proceeding or claim.

4 Q I understand.

5 A And then -- go ahead. Sorry.

6 Q Yeah. So what aspect of International's
7 claim are you contending is excluded by that
8 exclusion, that legal fees, costs, or expenses
9 exclusion of the policy?

10 A Well, this -- the exclusion is indicating
11 that legal fees, costs, and expenses incurred --
12 in this case, and from your example, as far as
13 prosecuting any legal proceeding or claim, are
14 excluded.

15 Q Right. But do you understand that
16 International Paper isn't asking for payment of
17 those legal fees, it's simply subtracting those
18 legal fees from the settlement amount in order to
19 get a net settlement amount of 14.1 million?
20 There's nothing wrong with Beazley doing that,
21 correct?

22 MR. MURPHY: Objection as to form.

23 Q Or International Paper subtracting the
24 cost to get that 15 million in legal fees to
25 result in a net amount of settlement proceeds of

1	14.1 million? Would you agree that that is	11:20:02
2	appropriate?	11:20:05
3	MR. MURPHY: Excuse my interruption. I	11:20:09
4	thought you had finished earlier. Objection as to	11:20:11
5	form.	11:20:14
6	A Well, the exclusion is with respect to	11:20:21
7	loss, shall not be liable for loss incurred or	11:20:24
8	expenses incurred or paid by insured in defending	11:20:31
9	or prosecuting any legal proceeding or claim.	11:20:34
10	Q Well, let's break this down. You know	11:20:39
11	that International Paper was pursuing Jag and Shiv	11:20:42
12	to obtain moneys back that were stolen through the	11:20:46
13	employee's scheme by filing this civil action and	11:20:54
14	by filing criminal charges? You understand that	11:20:57
15	that happened, right?	11:20:59
16	A I understand that there was a civil	11:21:01
17	complaint filed, yes.	11:21:06
18	Q And Beazley did not object to	11:21:07
19	International Paper filing that civil complaint in	11:21:13
20	an effort to recoup stolen funds, right?	11:21:16
21	A Beazley was not in a position to -- to	11:21:21
22	provide an objection to that.	11:21:33
23	Q Why do you say Beazley was not in a	11:21:34
24	position to provide an objection to International	11:21:40
25	Paper pursuing Jag and Shiv and Mid-South and DGS	11:21:42

1 for recouping stolen funds? 11:21:47

2 A Well, I understand there was the 11:21:50
3 allegation with respect to the funds, but Beazley 11:21:56
4 had not made a claim payment, so we had no ability 11:22:01
5 to object with regard to the civil complaint the 11:22:06
6 insured filed. 11:22:10

7 Q Okay. And Beazley did not object as a 11:22:11
8 matter of fact to IP pursuing Jag and Shiv and 11:22:16
9 Mid-South and DGS to try to recoup stolen funds; 11:22:22
10 is that correct? 11:22:26

11 A Again, Beazley did not object or have the 11:22:26
12 ability to object to the insured filed a civil 11:22:37
13 complaint. 11:22:44

14 Q And Beazley was happy that International 11:22:44
15 Paper was -- Shiv and DGS and Mid-South to try to 11:22:49
16 recoup stolen funds, wasn't it? 11:22:54

17 MR. MURPHY: Objection as to form. 11:22:57

18 A Again, Beazley was not in a position to 11:22:58
19 object to the insured filing a civil complaint. 11:23:06

20 Q And you understand that in order to pursue 11:23:08
21 that, you've got to pay lawyers to file lawsuits 11:23:17
22 and to pursue discovery and to put pressure on Jag 11:23:19
23 and Shiv and Mid-South and DGS in order to recoup 11:23:24
24 stolen funds, right? That's how -- that's how it 11:23:29
25 works, isn't it? 11:23:31

1	MR. MURPHY: Objection as to form.	11:23:33
2	A What exactly is your question?	11:23:34
3	Q That in order for International Paper to	11:23:44
4	pursue a civil action against Jag and Shiv and DGS	11:23:47
5	and Mid-South to try to recoup stolen funds, it's	11:23:53
6	got to pay lawyers to do that, right?	11:23:56
7	A We understand there may be costs	11:23:58
8	associated with the insured filing civil action.	11:24:04
9	Q And it's perfectly appropriate, if	11:24:09
10	International Paper received a settlement payment	11:24:13
11	of 15 million, to subtract out the legal costs	11:24:15
12	that it incurred before any moneys can be credited	11:24:20
13	to insured losses, right?	11:24:30
14	MR. MURPHY: Objection.	11:24:34
15	Q Versus what the net is after incurring the	11:24:34
16	expenses before there's any discussion of how any	11:24:38
17	net recovery should be distributed for the benefit	11:24:42
18	of the insurers or the policyholder, right?	11:24:47
19	MR. MURPHY: Objection as to form.	11:24:51
20	A Potentially, but, again, Beazley was not	11:24:53
21	in the position to object, and we are still in the	11:25:02
22	process of evaluating this matter under the	11:25:05
23	insured's policy.	11:25:08
24	Q Was Beazley contending that any of the	11:25:09
25	legal fees that IP incurred in order to pursue Jag	11:25:13

1 and Shiv and Mid-South and DGS and obtain that 11:25:19
2 \$15 million settlement, is Beazley contending that 11:25:23
3 any of that \$844,000 of legal fees was 11:25:26
4 unreasonable? 11:25:30

5 A We're reserving our rights with respect to 11:25:30
6 the reasonableness of those fees and to the extent 11:25:34
7 that they were for prosecuting the criminal action 11:25:38
8 as well. 11:25:44

9 Q Why are you reserving your right as to 11:25:45
10 reasonableness? What is it that would suggest 11:25:53
11 that any of those legal fees are unreasonable or 11:25:55
12 were incurred unreasonably? 11:25:59

13 A We're continuing to evaluate that. 11:26:00

14 Q And Beazley chose not to itself pursue Jag 11:26:03
15 and Shiv and Mid-South and DGS when given the 11:26:18
16 opportunity to do so by International Paper, 11:26:22
17 right? 11:26:24

18 A Well, as stated previously, Beazley was 11:26:26
19 not in the position as far as standing to pursue 11:26:30
20 anyone with respect to the claim allegations, 11:26:37
21 because we had not made a payment under the 11:26:42
22 policy. 11:26:45

23 Q Well, is Beazley second-guessing any of 11:26:45
24 the steps that International Paper took on its own 11:26:56
25 to pursue recoupment of stolen funds from Jag and 11:26:59

1	Shiv?	11:27:05
2	MR. MURPHY: Objection as to form.	11:27:08
3	A Are you asking if we object to the	11:27:23
4	insured's pursuit?	11:27:25
5	Q No. Are you saying that there's something	11:27:26
6	in the way that International Paper pursued Jag	11:27:30
7	and Shiv and Mid-South and DGS that Beazley thinks	11:27:35
8	was inappropriate or unreasonable or improper or	11:27:41
9	not -- not what Beazley would have done had it	11:27:45
10	controlled that pursuit?	11:27:50
11	MR. MURPHY: Objection as to form.	11:27:54
12	A Well, again, each claim is unique, and I	11:28:03
13	can't say necessarily what steps Beazley could	11:28:06
14	have taken if it had the ability to do so.	11:28:08
15	Q Well, you understand that International	11:28:22
16	Paper says that it incurred \$844,560 in legal fees	11:28:26
17	in order to obtain the \$15 million recoupment of	11:28:30
18	funds from Jag and Shiv and Mid-South and DGS?	11:28:33
19	That sounds like a pretty good return on	11:28:37
20	investment, doesn't it?	11:28:39
21	MR. MURPHY: Objection as to form.	11:28:41
22	A I couldn't say with certainty on that.	11:28:42
23	Q Beazley has no opinion one way or another	11:28:48
24	on that?	11:28:51
25	A I can't really speak to a return on	11:28:51

1	investment.	11:29:06
2	Q Now, you note that International Paper	11:29:07
3	hired E&Y to prepare the claim and detail in a	11:29:11
4	proof of loss the amounts that were stolen under	11:29:20
5	the employee theft claim that IP was making to	11:29:23
6	Beazley, correct?	11:29:28
7	A Yes.	11:29:28
8	Q And Beazley approved the use of E&Y was a	11:29:31
9	consultant to perform that claims preparation	11:29:40
10	activity, correct?	11:29:43
11	MR. MURPHY: Objection as to form.	11:29:44
12	A Do you have the document that's indicating	11:29:45
13	that agreement?	11:29:57
14	Q Not offhand. I didn't know that this was	11:29:58
15	an issue in dispute. Is Beazley contending that	11:30:01
16	it did not approve the use of E&Y by International	11:30:06
17	Paper to prepare the proof of loss that was	11:30:12
18	ultimately submitted?	11:30:14
19	A I would have to see the document that was	11:30:16
20	agreeing to that.	11:30:25
21	Q You don't --	11:30:25
22	A I don't recall offhand.	11:30:26
23	Q Okay. We can come back to that.	11:30:27
24	But assuming that Beazley approved the use	11:30:29
25	of E&Y to prepare the claim and present the proof	11:30:35

1 of loss, how is it that legal fees, costs, or
2 expenses exclusion applies to any of its fees or
3 expenses that were incurred in connection with
4 preparing the claim and submitting it to Beazley?

5 A Well, again, it does state prosecuting any
6 legal proceedings as well. And to the extent
7 that, for example, there were responses to the
8 government subpoenas, for example, that can
9 potentially fall within that exclusion.

10 Q Well, if E&Y had to gather the documents
11 anyway to prove the claim, if it also produced
12 those documents to the government, that doesn't
13 make the cost of gathering a producing documents
14 to support the claim uncovered under the legal
15 fees, costs, or expenses simply because they also
16 use those documents to respond to a government
17 subpoena, isn't that right?

18 MR. MURPHY: Objection as to form;
19 hypothetical.

20 A Well, again, as stated previously, to the
21 extent that in my example that there were costs or
22 fees incurred responding to, for example, a
23 government agency subpoena, for example.

24 Q Right. But if the response was to produce
25 documents that were already being gathered to

11:30:38
11:30:44
11:30:51
11:30:59
11:31:03
11:31:20
11:31:23
11:31:30
11:31:38
11:31:40
11:31:43
11:31:47
11:31:52
11:31:56
11:32:01
11:32:04
11:32:07
11:32:09
11:32:10
11:32:11
11:32:19
11:32:23
11:32:28
11:32:31
11:32:39

1 support the claim, that doesn't make those costs
2 uncovered, does it?

3 MR. MURPHY: Same objection. You can
4 answer.

5 A As stated previously, if it's responding
6 to, for example, a government or government agency
7 subpoena, responding to that type of request,
8 because we understand that there was a criminal
9 matter associated with this as well.

10 Q So what amounts of the \$958,599 of claims
11 preparation expenses that have been submitted by
12 International Paper, what portion of that does
13 Beazley contend is excluded because it was a
14 response to a government subpoena?

15 A I would have to defer to the expert
16 reports on that. I don't have that number at
17 hand.

18 Q I've looked at the expert reports. I
19 don't believe I see any number that is claimed to
20 be excluded. Are you saying that in the expert
21 report submitted by Beazley that there's a number
22 of dollars that are contended to be excluded under
23 the legal fees, costs, and expenses exclusion of
24 the policy because they were in response to a
25 government subpoena?

1 A I don't have that particular dollar
2 amount.

3 Q Well, I'm not asking you for a figure or
4 dollar amount. Do you believe that your expert,
5 Brad Wilson of StoneTurn, has given an opinion
6 about what portion of the \$958,599 of claims
7 preparation expenses are not covered because
8 they're a response to a government subpoena?

9 A What I'm saying is what I said previously
10 today, is that fees -- legal fees noted, costs, or
11 expenses with respect to prosecuting any legal
12 proceeding or claim can potentially fall under
13 this particular exclusion.

14 Q Okay. I understand that point. What I'm
15 asking you, because this is a last chance for us
16 to understand it, what specific costs out of that
17 claims preparation expense number of \$958,599 is
18 Beazley contending are excluded or possibly
19 excluded because they were responding to a
20 government subpoena?

21 I don't see that anywhere in your
22 discovery responses giving that number, and I
23 don't see it anywhere in your expert report. So
24 what is the number so that we have an opportunity
25 fairly to evaluate that criticism?

1 What is the number of dollars that you're
2 contending are not covered because they were
3 responding to a government subpoena?

11:36:13

11:36:16

11:36:18

4 MR. MURPHY: Objection as to form. She --
5 asked and answered. She can't give you a specific
6 figure.

11:36:22

11:36:25

11:36:27

7 A As I said previously this morning, I don't
8 have that exact number at hand.

11:36:29

11:36:34

9 Q Well, how are you going to give us that
10 number given that discovery is closing and that
11 your expert report doesn't address that?

11:36:37

11:36:42

11:36:44

12 A Again, Beazley's continuing to preserve
13 its rights with respect to the potential
14 applicability of this particular exclusion.

11:36:46

11:37:00

11:37:03

15 Q Well, when do you intend to inform
16 International Paper of a specific dollar number
17 that you believe is excluded by virtue of this
18 legal fees, costs, or expenses exclusion in the
19 policy?

11:37:06

11:37:09

11:37:12

11:37:19

11:37:23

20 A I can't give you an exact date.

11:37:23

21 Q Okay. Let's look at the eighth
22 affirmative defense, which is on Page 12 of
23 Exhibit 6.

11:37:42

11:37:46

11:37:51

24 It says that Plaintiff's claims are barred
25 in whole or in part to the extent that the

11:37:51

11:37:58

1 affiliates and prior employees exclusion in the 11:38:00
2 Beazley policy applies. 11:38:04

3 This exclusion provides, quote, the 11:38:05
4 underwriters shall not be liable under the 11:38:08
5 employee dishonesty, client property coverage, or 11:38:13
6 expense coverage insuring agreements for loss or 11:38:14
7 damage caused by, No. 1, any agent, broker, 11:38:17
8 factor, commission merchant, consignee, 11:38:22
9 contractor, independent contractor, subcontractor, 11:38:25
10 or similar person or entity, or, two, any employee 11:38:28
11 acting alone or in collusion with any other 11:38:33
12 employee more than 30 days following the 11:38:35
13 termination of such employee. 11:38:37

14 What facts or information does Beazley 11:38:38
15 have to support the assertion of that eighth 11:38:42
16 affirmative defense? 11:38:44

17 A Well, as stated previously today and in 11:38:46
18 earlier testimony, Beazley's still evaluating 11:39:05
19 whether there has been an employee dishonesty loss 11:39:11
20 with respect to the policy, and to the extent that 11:39:15
21 there has been, whether this exclusion may apply 11:39:22
22 as -- based on what we see in DGS and Mid-South 11:39:30
23 would be either contractors or potentially 11:39:37
24 independent contractors or subcontractors to the 11:39:40
25 insured. 11:39:47

1 Q Right. But this is talking about 11:39:48
2 underwriters shall not be liable for loss or 11:39:52
3 damage sustained by any insured -- in this case, 11:39:54
4 International Paper -- caused by, and it says any 11:39:57
5 agent, broker, factor, commission merchant, 11:40:00
6 consignee, contractor, independent contractor, 11:40:05
7 subcontractor, or similar person or entity. 11:40:07

8 You understand, don't you, that 11:40:10
9 International Paper is saying that its loss is 11:40:12
10 caused by its then-employee, Jag, right? 11:40:15

11 A We understand those are the allegations. 11:40:20

12 Q Right. Well, Jag is not an agent, broker, 11:40:27
13 factor, commission merchant, consignee, 11:40:30
14 contractor, independent contractor, subcontractor, 11:40:37
15 or similar person or entity; he was at the time an 11:40:40
16 actual employee of International Paper, right? 11:40:43

17 A Jag was an employee of International 11:40:45
18 Paper, yes. 11:40:49

19 Q And it's International Paper's claim that 11:40:50
20 they suffered loss because of the actions of their 11:40:54
21 employee, Jag, while he was an employee, correct? 11:40:58

22 A We understand those are the allegations. 11:41:02

23 Q And the second part of this exclusion 11:41:09
24 talks about loss or damage sustained by any 11:41:13
25 insured caused by any employee acting alone or in 11:41:16

1 collusion with any other employee more than
2 30 days following the termination of such
3 employee.

11:41:19

11:41:22

11:41:24

4 Do you see that?

11:41:25

5 A Yes, I see that section of the exclusion.

11:41:26

6 Q And that doesn't apply, right, because IP
7 is contending that it was Jag's actions while he
8 was an employee, not after he was terminated, that
9 give rise to his loss? I mean, to IP's loss,
10 isn't that right?

11:41:32

11:41:36

11:41:40

11:41:43

11:41:49

11 A I don't think that we're excluding
12 anything with respect to this exclusion, meaning
13 Beazley.

11:41:50

11:41:59

11:42:03

14 Q Are you saying that some part of
15 International Paper's claimed loss involves
16 activities of Jag more than 30 days after he was
17 terminated?

11:42:03

11:42:06

11:42:08

11:42:11

18 A I'm saying that Beazley is not excluding
19 any sections of that language.

11:42:12

11:42:21

20 Q Okay. So is it then Point No. 1 rather
21 than Point No. 2 of this exclusion that you're
22 focused on?

11:42:25

11:42:31

11:42:34

23 A We're -- we're considering it in its
24 entirety.

11:42:35

11:42:45

25 Q Well, how could it possibly apply if IP's

11:42:46

1 claim for coverage is for its loss sustained and 11:42:50
2 caused by its employee, Jag, while he was an 11:42:56
3 employee? How can this affiliates and prior 11:42:58
4 employees exclusion apply under any circumstance? 11:43:04

5 A Well, again, as stated previously, 11:43:06
6 Beazley's still evaluating and has not determined 11:43:15
7 that an employee dishonesty has occurred with 11:43:19
8 respect to this alleged incident. 11:43:22

9 And, again, as alleged with respect to the 11:43:25
10 payments that were made to DGS and Mid-South, 11:43:31
11 which we qualify as contractors with regard to 11:43:35
12 Section 1 of that exclusion. 11:43:40

13 Q But what precludes that Section 1 is that 11:43:45
14 it's loss or damage sustained by any insured 11:43:55
15 caused by. 11:43:59

16 Do you understand that International Paper 11:44:00
17 is saying that its loss was caused by the 11:44:01
18 dishonest activities of its employee, Jag? Do you 11:44:05
19 understand that's the nature of our claim? 11:44:12

20 MR. MURPHY: Objection as to form; asked 11:44:14
21 and answered. 11:44:15

22 A Beazley understands that that's what the 11:44:20
23 insured has alleged; however, we also understand 11:44:21
24 that payments were made to contractors in this 11:44:28
25 reported incident. 11:44:32

1 Q Well, of course they were made to third
2 parties, Jag's brother's company or companies, and
3 moneys were filed back to Jag. That's part of --
4 that's the way the scheme worked.

5 But the cause is because Jag was an
6 employee who had purchasing authority and could
7 direct contract payments to third parties -- i.e.,
8 his brother's companies -- that could then funnel
9 money back to him.

10 So how would even Section 1 apply when the
11 whole basis for the scheme is that we had a
12 dishonest employee, Jag, who was able to direct
13 money to third parties such as DGS and Mid-South?
14 How could that possibly apply in this case?

15 MR. MURPHY: Objection as to form; asked
16 and answered.

17 A Again, this exclusion may apply, and
18 Beazley continues to assert the potential
19 applicability of this particular affirmative
20 defense.

21 Q What additional information does Beazley
22 need to know before determining whether this
23 exclusion, the so-called affiliates and prior
24 employees exclusion, in the Beazley policy
25 applies?

11:44:37
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11:46:03
11:46:07

1 A Again, we're continuing to evaluate this
2 matter in totality.

3 Q All right. Let's go to the eleventh
4 affirmative defense on Page 12 of Exhibit 6. It
5 says Plaintiff's claims are barred in whole or in
6 part under the recoveries provision in the Beazley
7 policy.

8 The recoveries provision reads, quote,
9 recoveries, whether effected by the underwriters
10 or by the insured, less the cost of recovery,
11 shall be distributed as follows.

12 It says, first, to the insured for the
13 amount of loss otherwise covered but in excess of
14 the limits of liability. 2), Second, to the
15 underwriters for the amount paid to the insured
16 for covered loss. 3), third, to the insured for
17 the deductible; and, fourth, to the insured for
18 loss specifically excluded hereunder. Recovery
19 from reinsurance or indemnity of the underwriters
20 shall not be deemed a recovery hereunder.

21 How does that recoveries provision of the
22 policy provide an affirmative defense to coverage
23 for Beazley?

24 A Well, Beazley understands that there was a
25 settlement in this matter, and that the insured

1	has offset its claimed loss based on the alleged	11:47:46
2	scheme based on that amount of recovery.	11:47:55
3	Q Okay. Now, you understand that Beazley	11:47:58
4	has not paid any money to International Paper on	11:48:11
5	this claim, correct?	11:48:14
6	A Correct. There have not been any claim	11:48:15
7	payments by Beazley at this time.	11:48:21
8	Q Okay. And so that under this recoveries	11:48:23
9	provision, there's no provision that Beazley would	11:48:26
10	obtain any amount of that settlement payment	11:48:30
11	because Beazley has not paid any amounts to the	11:48:37
12	insured's recovered loss, correct?	11:48:40
13	A Yes, that's correct.	11:48:46
14	Q So Beazley is not claiming any entitlement	11:48:47
15	to that -- to any or all of that settlement amount	11:48:51
16	that was obtained by International Paper; isn't	11:48:57
17	that correct?	11:49:01
18	A Yes, that's correct.	11:49:01
19	Q Okay. Let's look at the twelfth	11:49:04
20	affirmative defense.	11:49:12
21	The twelfth affirmative defense is	11:49:14
22	Plaintiff's claims are barred to the extent	11:49:24
23	Plaintiff has failed to mitigate any damages.	11:49:26
24	What are the facts or information that	11:49:30
25	Beazley has that would support assertion of this	11:49:32

1 defense, that International Paper had failed to
2 mitigate its damages?

3 A Are you on 12 or 13?

4 Q I'm on -- I'm sorry. I'm on -- did I skip
5 over? I'm sorry. I read 13 when I should have
6 said 12. Let's do 12 first, then 13.

7 The twelfth affirmative defense is,
8 Plaintiff's claims are barred to the extent
9 Plaintiff has breached any condition precedent to
10 coverage under the Beazley policy, including but
11 not limited to taking any action which in any way
12 increases the underwriters' exposure under the
13 Beazley policy.

14 So what facts or information does Beazley
15 have to support its assertion of the twelfth
16 affirmative defense that International Paper has
17 breached any condition precedent to coverage
18 including but not limited to taking any action
19 which in any way increases the underwriters'
20 exposure?

21 A Well, as we were discussing earlier today,
22 there was a settlement agreement that was entered
23 into by the insured with Jag, DGS, and Mid-South.
24 And we understand that from the insured's own
25 evaluation of assets that there were potential

1 significance that based on that agreement, as it 11:51:15
2 was a full release, could not be -- could no 11:51:25
3 longer be pursued. 11:51:29

4 And we understand that the source of the 11:51:31
5 settlement funds was not from a liquidation of any 11:51:37
6 of those properties that were listed in the 11:51:40
7 insured's Kroll report, for example. 11:51:46

8 Q Are you -- is Beazley contending that 11:51:50
9 International Paper should have gotten more money 11:51:55
10 in settlement than the \$15 million that it 11:51:57
11 obtained? 11:51:59

12 A Beazley is indicating that, based on the 11:52:00
13 information the insured provided, there were other 11:52:11
14 assets that were available and not pursued, and 11:52:14
15 the insured entered into a full release. 11:52:19

16 Q Did you review the testimony of 11:52:22
17 Plaintiff's witness, Danny Van Horn, to explain 11:52:25
18 why International Paper believed 15 million was 11:52:29
19 the maximum amount it could recover from Jag and 11:52:32
20 Shiv at Mid-South and DGS? 11:52:36

21 A No. 11:52:39

22 Q Well, Beazley asked for a witness to 11:52:40
23 explain why they settled for that amount, 15 11:52:47
24 million, and not any more given all the facts and 11:52:51
25 circumstances, and you're saying that you haven't 11:52:55

1	read his testimony?	11:52:57
2	MR. MURPHY: Objection as to form;	11:52:59
3	argumentative.	11:53:01
4	A No. I've not read his testimony.	11:53:04
5	Q Well, wouldn't you want to read his	11:53:07
6	testimony before making a judgment about whether	11:53:10
7	those properties, for example, were available to	11:53:13
8	increase the settlement amount?	11:53:23
9	MR. MURPHY: Objection as to form. Well,	11:53:25
10	again, the insured did enter into a full release	11:53:38
11	in exchange for the payment that was issued, and	11:53:42
12	because of that release, if there's no further	11:53:52
13	ability to pursue Jag, Shiv, DGS, or Mid-South for	11:53:59
14	anything further.	11:54:10
15	Q Are you saying that Beazley, had it	11:54:14
16	controlled the litigation, could have gotten more	11:54:18
17	money or a more limited release? Is that what	11:54:20
18	Beazley is contending had it taken over the	11:54:23
19	litigation pursuing Jag and Shiv?	11:54:29
20	MR. MURPHY: Objection as to form; calls	11:54:31
21	for speculation; hypothetical.	11:54:33
22	A Well, as stated previously, Beazley did	11:54:36
23	not have -- was not in standing to take over	11:54:41
24	pursuit of those individuals, but we do understand	11:54:46
25	from the insured's own searches that they were	11:54:51

1 relisting holdings and that they were not the
2 source of the settlement funding.

3 Q Right. And did you understand why they
4 were not the source of the funding? Did you
5 understand that those were not traceable to this
6 particular scheme given that many of those
7 properties were owned by Jag or other entities
8 prior to the scheme having been effected?

9 A I can't comment on that.

10 Q Did you understand that the U.S.
11 government didn't believe that it could seize
12 those funds because they couldn't trace them to
13 the scheme?

14 MR. MURPHY: Objection as to form; calls
15 for speculation.

16 A I can't comment on the government's
17 settlement procurement strategy.

18 Q You understand that any additional moneys
19 that they had seized had to first be used to
20 satisfy government obligations like tax
21 obligations that Jag and Shiv and DGS and
22 Mid-South had before there would be money left
23 over for recovery by International Paper?

24 A That's what was reported to Beazley.

25 Q And you understand that at the time of the

1	settlement, International Paper asked Beazley	11:56:44
2	whether it had any objection to the settlement,	11:56:48
3	and Beazley punted and said it would not consent	11:56:50
4	nor object to the settlement? Do you recall that?	11:56:57
5	MR. MURPHY: Objection as to form.	11:57:01
6	A I recall that there was an objection.	11:57:03
7	Q There was an objection?	11:57:12
8	A There was a response by Beazley to the	11:57:19
9	request for consent, and Beazley did not provide	11:57:23
10	consent.	11:57:27
11	MR. SYLVESTER: Let me ask, if I could,	11:57:49
12	Harold, to put up Exhibit 15.	11:57:52
13	(Exhibit 15 was marked for identification	11:57:53
14	and is attached to the transcript.)	11:58:13
15	BY MR. SYLVESTER:	11:58:13
16	Q Can you open up Exhibit 15?	11:58:14
17	A Yes. I just have to, I think, save it	11:58:15
18	first.	11:58:19
19	Q Is it not in your chat box? It's in mine.	11:58:20
20	A It is, but I have to save it, and then --	11:58:22
21	I don't know. That's just how the application is	11:58:29
22	working, I think similarly to the last session.	11:58:31
23	Okay. I have the -- it's a 14-page	11:58:44
24	document?	11:58:48
25	Q Yes. I'm just going to ask you about the	11:58:48

1 first page. It's a trail of emails back and forth
2 regarding the proposed settlement with Jag and
3 Shiv and Mid-South between Mr. Keeley, who was
4 then representing Beazley, and Danny Van Horn, the
5 lawyer who was representing International Paper.

6 And if you look on the first page in this
7 email from Michael Keeley dated May the 2nd, 2022,
8 to Danny Van Horn. Do you see that email?

9 A Yes, I do.

10 Q And this is with regard to a proposed
11 settlement with Jag and Shiv and Mid-South and DGS
12 in the 15 to \$16 million range.

13 And Mr. Keeley writes on May 2nd, 2022,
14 the insurers appreciate the information
15 International Paper has provided. Unfortunately,
16 given the various unanswered questions, neither of
17 the insurers has enough information to determine
18 whether the amount of the proposed restitution is
19 reasonable. As a result, while Beazley does not
20 object to the fact that International Paper would
21 dismiss its claims against the two principals in
22 exchange for the proposed restitution payment, it
23 is unable to agree that the amount of the proposed
24 restitution payment is reasonable, and it reserves
25 its right to object to the reasonable -- to the

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12:00:01
12:00:04
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12:00:19

1 presumably reasonableness of any such payment if 12:00:24
2 additional information demonstrates that the 12:00:29
3 amount of the restitution payment is not 12:00:31
4 reasonable. 12:00:33

5 And then it goes on to say Beazley further 12:00:33
6 reserves all of its rights under the policy, 12:00:38
7 including the right to object that by dismissing 12:00:41
8 its claims against the principals, International 12:00:43
9 Paper has wrongly prejudiced Beazley's potential 12:00:46
10 subrogation rights. While Zurich is also unable 12:00:51
11 to determine whether the amount of the proposed 12:00:55
12 restitution payment is reasonable, given the 12:00:57
13 amount of the proposed payment and Zurich's 12:00:59
14 attachment point on its excess policy, it does not 12:01:02
15 object to the amount of the restitution payment. 12:01:05
16 The insurers continue to reserve all of their 12:01:08
17 other rights and defenses in this matter. Thank 12:01:10
18 you. Regards, Michael Keeley. 12:01:13

19 Do you see that? 12:01:14

20 A Yes, I see the email. 12:01:15

21 Q Do you recall him sending the email at the 12:01:17
22 time and consulting with you about this at the 12:01:19
23 time in May of 2022? 12:01:22

24 A Yes, I do. 12:01:25

25 Q And he was representing both Beazley, 12:01:26

1 first-layer insurer, and Zurich, the second-layer
2 insurer. At the time, he was representing both
3 entities, correct?

12:01:30

12:01:33

12:01:39

4 A Yes, he was.

12:01:39

5 Q And for Zurich, he said that they did not
6 object to the amount of the restitution payment,
7 and as for Beazley, he said Beazley does not
8 object to the fact that International Paper would
9 dismiss its claims against the two principals in
10 exchange for the proposed restitution payment, is
11 unable to agree that the amount of the proposed
12 restitution payment is reasonable and reserves its
13 right to object to the reasonableness of any such
14 payment if additional information demonstrates
15 that the amount of the restitution payment is not
16 reasonable.

12:01:40

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17 So my question to you, Ms. Ellis, is have
18 you gotten any additional information since May of
19 2022 to demonstrate that the amount of the
20 restitution payment is not reasonable?

12:02:17

12:02:21

12:02:23

12:02:28

21 A If Beazley has received any information
22 indicating that the settlement was unreasonable?

12:02:42

12:02:44

23 Q Correct.

12:02:47

24 A Well, as stated previously, there were
25 other assets available, and the settlement

12:02:48

12:02:58

1 agreement precludes any further payments by Jag
2 and others for the alleged scheme.

3 Q Okay. And since that --

4 A I mean, we know that there were other
5 assets.

6 Q Right. And I'm asking you, if Mr. Van
7 Horn in his deposition by your counsel explained
8 why it was not practical or feasible to go after
9 other assets, shouldn't you take that into
10 consideration into determining whether this
11 settlement of \$15 million was reasonable?

12 A Well, the agreement that was executed
13 prevents even one penny of any further payments by
14 Jag and others.

15 Q Right. And you understand that Mr. Van
16 Horn explained why he believed and International
17 Paper believed that it was reasonable in order to
18 get that \$15 million to give the release that was
19 being demanded in light of the inability to
20 practically obtain any other moneys? Shouldn't
21 you consider that testimony in determining whether
22 this was, in fact, a reasonable settlement?

23 MR. MURPHY: Objection as to form.

24 A Again, there were other known assets, and
25 this -- the release that the insured entered into

1 precludes any further payments, even of \$1, or a
2 recurring basis from Jag or others.

3 Q I understand that, but my question is why
4 haven't you read the testimony of Mr. Van Horn
5 explaining why those other assets were not
6 practically available to increase the settlement
7 amount?

8 MR. MURPHY: Objection as to form.

9 A Well, my response isn't specific to just
10 the real estate holdings. It's that the
11 settlement that the insured entered into prevents
12 any further payments by Jag and others for the
13 reported alleged scheme.

14 Q Well, do you realistically think that Jag
15 and Shiv were going to pay \$15 million and not get
16 a release so that International Paper and its
17 insurers could go after them for more money? Do
18 you really expect that that would happen in a
19 settlement?

20 MR. MURPHY: Objection as to form; calls
21 for speculation.

22 A Beazley is not able to speak to what their
23 expectations were, meaning Jag or Shiv.

24 Q Well, I'm asking you, do you know -- as a
25 person who's worked in this business for years, do

12:04:55

12:05:05

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12:06:30

12:06:36

1 you know of any settlements where people agree to
2 pay \$15 million and yet still allow, as part of
3 the settlement, for the other side to come after
4 them for more money later?

5 MR. MURPHY: Objection; overbroad.
6 Objection as to form.

7 A I'm only speaking on -- with respect to
8 this particular incident.

9 Q I know, but I'm asking you from your years
10 of practical experience in the settlement, a
11 settlement usually involves a release of claims in
12 exchange for a payment.

13 Are you suggesting that this agreement,
14 this settlement is not reasonable because even
15 though we got \$15 million, Jag and Shiv and
16 Mid-South and DGS insisted on having a release so
17 that we wouldn't come after them for more money?
18 Is that Beazley's position as to why the agreement
19 is unreasonable?

20 MR. MURPHY: Same objection.

21 A Well, going back to the affirmative
22 defense, it does state taking -- not limited to
23 taking any action which in any way increases the
24 underwriters' exposure, and we --

25 Q I'm sorry. Go ahead.

12:06:39
12:06:43
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12:07:36
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12:07:43
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12:08:02
12:08:07
12:08:11
12:08:18

1	A It's okay. Go ahead.	12:08:19
2	Q Yeah. How did this settlement increase	12:08:20
3	Beazley's exposure?	12:08:23
4	MR. MURPHY: Asked -- objection; asked and	12:08:25
5	answered.	12:08:27
6	A As stated previously, there were other --	12:08:28
7	there were other assets, known assets, and the	12:08:33
8	release entered into by the insured prevents	12:08:39
9	pursuing those assets or any other unknown assets	12:08:45
10	and/or, for example, any other payments for any	12:08:50
11	potential alleged losses even on a recurring	12:08:56
12	basis.	12:09:01
13	Q The thirteenth affirmative defense saying	12:09:02
14	Plaintiff's claims are barred to the extent	12:09:09
15	Plaintiff has failed to mitigate any damages.	12:09:11
16	What facts or information does Beazley	12:09:14
17	have to support the thirteenth affirmative	12:09:15
18	defense?	12:09:24
19	A Well, similar to the responses to the	12:09:25
20	twelfth affirmative defense, there was a	12:09:27
21	settlement that was entered into by the insured,	12:09:33
22	with Jag, DGS, and Mid-South that precludes any	12:09:39
23	further recoveries beyond what the insured has	12:09:46
24	already received to date.	12:09:50
25	And based on the material submitted from	12:09:59

1 the insured from their own expert, there were 12:10:02
2 other known assets and potential unknown assets 12:10:04
3 that could have been source of recovery that are 12:10:09
4 now precluded. 12:10:11

5 Q Is it Beazley's position that 12:10:13
6 International Paper should not have entered into a 12:10:15
7 settlement with Jag and Shiv so as not to release 12:10:17
8 any claims against them and should have rejected 12:10:20
9 the offer of \$15 million? Is that Beazley's 12:10:27
10 position? 12:10:31

11 A Beazley's position is that the insured's 12:10:32
12 actions failed to mitigate its alleged damages 12:10:43
13 from the alleged loss in this circumstance. 12:10:49

14 Q Well, what should -- what should 12:10:54
15 International Paper have done differently, then, 12:10:57
16 to avoid -- or to further mitigate damages 12:11:00
17 according to Beazley? What would International 12:11:07
18 Paper have done differently? 12:11:09

19 A Well, for example, we did not see any type 12:11:11
20 of financial disclosure or attestation by Jag, 12:11:22
21 Shiv, or others of their financial assets in 12:11:29
22 total. 12:11:31

23 Q Did you review the testimony of Mr. Horn 12:11:35
24 (sic) where he explained why that was the case? 12:11:38

25 MR. MURPHY: Objection; asked and 12:11:42

1 answered.

12:11:43

2 A Again, I have not reviewed any of the
3 deposition transcripts, and as stated previously,
4 we did not see any type of financial disclosure or
5 attestation from Jag, Shiv, or others with respect
6 to their assets.

12:11:47

12:11:52

12:11:56

12:12:04

12:12:08

7 Q Well, did you understand that they weren't
8 willing to provide that as part of the settlement?

12:12:14

12:12:16

9 A I don't have direct knowledge of that.

12:12:18

10 Q Well, if they weren't willing to provide
11 that as part of a settlement because they feared
12 it might get them into more trouble with the IRS,
13 are you saying that as a result, International
14 Paper should not have entered into the settlement
15 and should not have obtained the \$15 million, but
16 should have continued to litigate? Is that what
17 Beazley is saying International Paper should have
18 done?

12:12:28

12:12:30

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12:12:51

12:12:54

19 MR. MURPHY: Objection as to form.

12:12:54

20 A I can't speak to Jag, Shiv, either of
21 their mindsets.

12:12:55

12:13:04

22 Q No, I'm not asking you about Jag or Shiv's
23 mindsets. I'm saying if there was no settlement
24 available, if International Paper insisted on some
25 financial disclosure attestation, is it Beazley's

12:13:06

12:13:12

12:13:15

12:13:18

1 position that International Paper, in that 12:13:22
2 circumstance, should have forsaken the settlement 12:13:25
3 of the 15 million and should just have continued 12:13:30
4 to litigate against Jag and Shiv? 12:13:34

5 Is that what you're saying would have 12:13:37
6 mitigated damages more so than what they did do, 12:13:39
7 which is to settle and take the 15 million? 12:13:42

8 MR. MURPHY: Objection as to form. 12:13:47

9 A Again, as previously stated, with regard 12:14:01
10 to mitigation, the insured entering into that 12:14:08
11 agreement while we still haven't -- Beazley hasn't 12:14:11
12 made a determination on coverage under the policy. 12:14:15
13 The agreement precludes any further recoveries of 12:14:26
14 even \$1 from these individuals, which I understand 12:14:30
15 they've refused to disclose any other assets 12:14:33
16 outside of what the source of the 15 million. 12:14:37

17 Q Right. So is Beazley saying that 12:14:43
18 International Paper should not have entered into a 12:14:49
19 settlement with Jag and Shiv and obtained the 15 12:14:51
20 million because there was no financial disclosure? 12:14:54
21 That's what you're saying International Paper 12:14:59
22 should have done, forsake the 15 million and 12:15:01
23 continue to litigate against Jag and Shiv? That's 12:15:08
24 what you believe would have mitigated damages? 12:15:11

25 MR. MURPHY: Objection as to form; asked 12:15:18

1 and answered.

2 A Well, Beazley is saying that the
3 settlement did not fully -- it didn't mitigate the
4 claim, and it prevented any further recoveries
5 from individuals that had other known and unknown
6 assets --

7 Q Right.

8 A -- even a penny in the future.

9 Q Right. International Paper had said
10 that's the best deal they can get, 15 million in
11 exchange for the release, and it's a full release.

12 And Beazley -- is it your position that in
13 order to mitigate damages, International Paper
14 should have rejected the settlement, walked away
15 from the 15 million, and continued to litigate
16 against Jag and Shiv? That's what you believe
17 alternatively International Paper should have done
18 to mitigate its damages versus what it did do in
19 settlement?

20 MR. MURPHY: Objection as to form; asked
21 and answered.

22 A Again, as stated this afternoon, the
23 settlement precludes -- that was executed, I
24 should say. The settlement that was executed
25 precludes any further recoveries from these

1	individuals.	12:16:56
2	Q Okay.	12:17:01
3	A And other assets that were known.	12:17:03
4	Q One more affirmative defense, and then	12:17:06
5	we'll break for lunch. The fourteenth affirmative	12:17:08
6	defense says Plaintiff's claims are barred in	12:17:12
7	whole or in part by the equitable doctrine of	12:17:16
8	waiver, estoppel, unclean hands and laches.	12:17:20
9	What information or facts does Beazley	12:17:24
10	have to support the assertion of that fourteenth	12:17:26
11	affirmative defense?	12:17:34
12	A That affirmative defense also goes back to	12:17:35
13	the settlement that was entered into. We	12:17:45
14	understand that the insured entered into a full	12:17:46
15	release with Jag, DGS, and Mid-South from a	12:17:52
16	document we saw earlier today in our prior session	12:17:58
17	that precludes any further recoveries, payments,	12:18:01
18	et cetera, from the alleged scheme.	12:18:09
19	Q Okay. And which one -- which doctrine are	12:18:14
20	you referring to by the entered into the	12:18:17
21	settlement, waiver, estoppel, unclean hands and	12:18:21
22	laches?	12:18:27
23	A We're looking at that in totality.	12:18:27
24	Q How does entering into that settlement	12:18:30
25	give International Paper unclean hands?	12:18:33

1 A Well, again, the insured was aware of
2 other assets that were not the source of the
3 settlement funds.

4 Q You understand that during the settlement
5 process, International Paper kept Beazley informed
6 of the negotiations and the settlement proposal
7 that was on the table, right?

8 A There were communications.

9 Q And at the end of the day --

10 A With --

11 Q Okay. There were communications between
12 International Paper and Beazley about the proposed
13 settlement.

14 And at the end of the day when
15 International Paper had to make a decision,
16 Beazley would not either object nor would they
17 consent to the settlement, but simply said we
18 reserve our rights to later contest the settlement
19 if you go through with it; isn't that right?

20 A Can you repeat the last part of that,
21 please?

22 Q Yeah. I'll just restate the question.

23 With regard to the communications between
24 International Paper and Beazley about the proposed
25 settlement with Jag and Shiv and Mid-South and

1 DGS, at the end of the day when International
2 Paper had to make a decision as to whether to
3 accept the 15 million in settlement or not and
4 asked for Beazley's consent, Beazley responded by
5 saying it would neither object nor consent and it
6 was going to reserve its rights to content the
7 reasonableness of the settlement.

8 That was the final answer that Beazley
9 gave to International Paper, right?

10 MR. MURPHY: Objection as to form. You
11 can answer.

12 A Well, Beazley did not object, but did
13 reserve its rights with respect to the settlement.

14 Q Right. And basically Beazley was telling
15 International Paper you're on your own to make a
16 decision; we reserve the right to second-guess it
17 at a later time? Isn't that what Beazley
18 essentially told International Paper?

19 MR. MURPHY: Objection as to form.

20 A Again, Beazley continued to assert its
21 rights with respect to the reasonableness of the
22 settlement that the insured was proposing.

23 MR. SYLVESTER: Okay. It's 12:21. Why
24 don't we go off the record.

25 VIDEOGRAPHER: We are going off the

1 record. The time is 12:21 p.m.

12:21:25

2 (A recess was taken.)

12:21:27

3 VIDEOGRAPHER: We are back on the record.

13:04:11

4 The time is 1:04 p.m.

13:04:12

5 BY MR. SYLVESTER:

13:04:14

6 Q Ms. Ellis, we had been looking the
7 previous day at Exhibit 7, which is the Defendant
8 Beazley Insurance Company's supplemental responses
9 to Plaintiff's first set of interrogatories, and I
10 want you to open that up, if you would. It should
11 be in your chat box. And turn, if you would, to
12 Page 11, which I think is where we left off the
13 last time.

13:04:14

13:04:20

13:04:25

13:04:27

13:04:32

13:04:35

13:04:37

13:04:40

14 (Exhibit 7 was previously marked for
15 identification and is attached to the transcript.)

13:04:40

13:05:03

16 A I have it open.

13:05:03

17 Q Okay. Could you turn to the bottom of
18 Page 11? This is the response -- this is in the
19 lengthy response to Interrogatory No. 2 that we
20 had been looking at, the question of which was
21 identify all facts supporting your denial of any
22 allegations set forth in the complaint, and the
23 response goes on for a number of pages.

13:05:04

13:05:07

13:05:12

13:05:15

13:05:15

13:05:25

13:05:27

24 And so I wanted to continue with some
25 questions where we left off at the last session on

13:05:29

13:05:35

1 December 18th. The bottom last two sentences on
2 Page 11 when you're talking about diverse or
3 minority-owned business, this Tier 1 and Tier 2
4 arrangements, the last two sentences say all or
5 most of the contracts, invoices, and other
6 transaction data relating to Tier 1 suppliers did
7 not reflect any value-added services in exchange
8 for this markup.

9 Where a Tier 1 supplier did provide some
10 form of additional service, for example,
11 transport, process improvements, packaging,
12 inventory management, bulk purchases, or
13 distribution, the value of those services did not
14 approach the amount of the price markup it charged
15 to IP.

16 Do you see that last two sentences on
17 Page 11?

18 A Yes, I do.

19 Q So where Beazley asserts the value of the
20 services provided by diversity, Tier 1 providers
21 did not approach the amount of the price of markup
22 had charged to IP, did Beazley do an analysis of
23 that to come up with that statement, some sort of
24 financial or other analysis to compare value of
25 services versus price charged in markup?

1	A Yes, there was analysis performed on that.	13:07:05
2	Q And what analysis is that that you're	13:07:18
3	referring to?	13:07:21
4	A I would defer to the expert reports on	13:07:24
5	that.	13:07:28
6	Q I mean, the only expert report that I saw	13:07:28
7	for Beazley that may touch on that is the Rose	13:07:36
8	Mary Coates expert report where she opined that a	13:07:40
9	typical distributor of chemicals would charge	13:07:43
10	about 8 to 10 percent. Is that what you're	13:07:48
11	referring to there?	13:07:52
12	A Well, again, I'm referring to the expert	13:07:52
13	reports.	13:07:56
14	Q Well, I mean, you only have two expert	13:07:58
15	reports. Right? Rosemary Coates and Brad Wilson,	13:08:02
16	correct?	13:08:09
17	A Yes.	13:08:13
18	Q So what about the Rosemary Coates report	13:08:14
19	compares the value of the services provided by the	13:08:30
20	diverse Tier 1 providers versus the markup that it	13:08:32
21	charged?	13:08:33
22	A Can you repeat your question, please?	13:08:33
23	Q Yeah. What specifically in the Rosemary	13:08:42
24	Coates expert report are you referring to when you	13:08:46
25	say that you referred to that report to support	13:08:50

1 the statement that the value of the services
2 provided by diverse Tier 1 suppliers did not
3 approach the amount of the price markup that it
4 charged to International Paper?

13:08:55

13:08:57

13:09:00

13:09:05

5 A No. I was saying to you that I defer to
6 the expert reports, not refer.

13:09:08

13:09:13

7 Q Well, are you saying that you believe the
8 expert reports support this statement at the
9 bottom of Page 11 of Exhibit 7?

13:09:14

13:09:22

13:09:25

10 A There was analysis performed, and it was
11 detailed in the expert reports.

13:09:27

13:09:46

12 Q Okay. And when you say expert reports,
13 there are two of them that you submitted, Rosemary
14 Coates and then Brad Wilson. Are you referring to
15 both of them providing support for this statement
16 that the value of the services performed by Tier 1
17 diverse suppliers did not approach the amount of
18 the markup price that it charged to International
19 Paper, or are you saying it's one or the other of
20 those two expert reports that addresses that
21 subject?

13:09:48

13:09:50

13:09:53

13:09:56

13:10:02

13:10:06

13:10:09

13:10:14

13:10:16

13:10:18

22 Do you have the question in mind,
23 Ms. Ellis?

13:11:07

13:11:09

24 A Well, I'm not sure what you're asking me,
25 if I had responded I would defer to the reports,

13:11:10

13:11:13

1 the expert reports.

13:11:19

2 Q Right, and I'm asking you, are you talking
3 about both Wilson and Coates supporting this
4 statement, or just one or the other of those two,
5 of Beazley's expert reports supporting this
6 statement?

13:11:20

13:11:23

13:11:26

13:11:31

13:11:34

7 A Both.

13:11:45

8 Q Okay.

13:11:45

9 A To the extent they respond to that item.

13:11:47

10 Q And how much of the markup that Tier 1
11 diversity suppliers charged to IP, how much of
12 that did not reflect any value of services it
13 performed?

13:11:50

13:11:57

13:12:00

13:12:04

14 A I don't have an exact percentage on that.

13:12:04

15 Q Do you have a rough idea of how much of
16 the price markup they were charging that was not
17 related to value of services performed but was
18 just pure profit?

13:12:31

13:12:32

13:12:35

13:12:39

19 A I don't have an exact number on that.

13:12:41

20 Q Do you understand Beazley's position as to
21 that, should I ask Beazley's experts for those
22 amounts or percentages of the markup by Tier 1
23 diversity suppliers that did not relate to value
24 of services performed?

13:12:50

13:12:51

13:12:57

13:13:02

13:13:11

25 A Can you repeat your question, please?

13:13:12

1 Q If I want to know Beazley's position about 13:13:14
2 how much of a price markup charged by IP's diverse 13:13:16
3 Tier 1 suppliers was not equivalent to the value 13:13:23
4 of the services performed, are you saying that I 13:13:29
5 should ask your experts, Mr. Wilson and 13:13:33
6 Ms. Coates, for the answer to that question? 13:13:35

7 A Again, I would defer to the experts for 13:13:39
8 that item and their reports. 13:13:46

9 Q All right. Can you go to Page 12 of 13:13:51
10 Exhibit 7? 13:13:59

11 In the middle of the first paragraph, do 13:14:10
12 you have that Page 12 in front of you? 13:14:15

13 A Yes, I do. 13:14:17

14 Q It says in connection with the Tier 2 13:14:21
15 diversity arrangements, in many instances, 13:14:23
16 Jagannath confirmed with the chemical manufacturer 13:14:29
17 to include a Tier 2 diversity supplier as part of 13:14:34
18 a comprehensive arrangement that benefited IP in 13:14:36
19 multiple ways. 13:14:39

20 And when you say Jagannath negotiated with 13:14:40
21 the chemical manufacturers to conclude a Tier 2 13:14:47
22 diversity supplier, you're talking about in some 13:14:51
23 cases that Tier 2 diversity supplier was DGS and 13:14:54
24 Mid-South, right? 13:15:03

25 A In some cases, yes. 13:15:05

1 Q All right. And so Beazley acknowledges 13:15:07
2 that Jag would negotiate on behalf of DGS and 13:15:16
3 Mid-South to get them to be accepted by the 13:15:16
4 majority supplier as a Tier 2 diversity supplier; 13:15:19
5 isn't that correct? 13:15:24

6 MR. MURPHY: Objection as to form. 13:15:24

7 A Whether he negotiated for them to be a 13:15:49
8 diversity supplier? 13:15:52

9 Q Yes. Isn't this saying that Jag 13:15:56
10 negotiated with some of the majority suppliers to 13:15:58
11 include Tier 2 diversity suppliers like DGS and 13:16:01
12 Mid-South to be Tier 2 partners with the majority 13:16:05
13 supplier? 13:16:10

14 A That's what the sentence says, yes. 13:16:11

15 Q Okay. And it goes on to say that it was 13:16:25
16 part of an arrangement, the comprehensive 13:16:27
17 arrangement that benefitted IP in many ways? 13:16:30

18 How did including DGS and Mid-South as a 13:16:34
19 Tier 2 supplier with the majority supplier where 13:16:39
20 DGS and Mid-South got paid commissions for 13:16:40
21 purchases of chemicals by IP for the majority 13:16:42
22 supplier, how did that benefit IP? 13:16:47

23 MR. MURPHY: Objection as to form. 13:16:51

24 A Well, we do understand that the insured 13:16:53
25 did have some diversity spend targets and that 13:17:03

1 information was being -- the spend was being 13:17:07
2 tracked to demonstrate the insured's use of 13:17:10
3 various diverse vendors within their supply chain. 13:17:20

4 Q Okay. Is that the benefit to IP that 13:17:29
5 you're referring to, to get DGS and Mid-South as a 13:17:32
6 Tier 2 supplier with its majority suppliers, the 13:17:36
7 fact that it increased the diversity spend 13:17:40
8 numbers? 13:17:43

9 A Well, what I'm saying is IP had targets 13:17:52
10 that they were looking to meet, and that spend was 13:17:55
11 being tracked internally as well. 13:17:59

12 Q And even if that's correct, how does that 13:18:09
13 take away from the fact that Jag was stealing from 13:18:11
14 a company by directing business and dollars to DGS 13:18:15
15 and Mid-South and having some of those dollars 13:18:20
16 funneled back to him? 13:18:22

17 MR. MURPHY: Objection as to form. 13:18:25

18 A Can you repeat your question, please? 13:18:33

19 Q Even if it's true that there was some 13:18:35
20 benefit to IP from getting DGS and Mid-South 13:18:37
21 included in diversity spend figures, how does that 13:18:42
22 take away from the fact that Jag was stealing from 13:18:46
23 the company by directing business to DGS and 13:18:49
24 Mid-South and then having some of that money 13:18:55
25 funneled back to himself? 13:18:57

1	MR. MURPHY: Objection as to form.	13:19:02
2	A Again, I'm not really understanding what	13:19:18
3	your question is.	13:19:19
4	Q Okay. The fact that there might be some	13:19:20
5	ancillary benefit to IP of increasing its diverse	13:19:22
6	spending targets doesn't take away from the fact	13:19:30
7	that Jag is stealing from the company by directing	13:19:32
8	contractual payments to DGS and Mid-South, his	13:19:36
9	brother's companies, and then getting some of that	13:19:40
10	money funneled back to him, right?	13:19:43
11	MR. MURPHY: Objection to form.	13:19:45
12	A I can't really comment on that. I don't	13:19:47
13	think that Beazley's in agreement with that, with	13:19:49
14	that statement.	13:19:52
15	Q Why are you in disagreement with that	13:19:53
16	statement?	13:20:01
17	A Well, you're asking for Beazley to agree	13:20:01
18	on things that are still being evaluated.	13:20:10
19	Q Well, if you assume hypothetically that	13:20:12
20	Jag is directing business to DGS and Mid-South	13:20:19
21	either as a Tier 1 or Tier 2 supplier such that	13:20:24
22	it's getting payments and those -- part of those	13:20:28
23	payments are being funneled back to Jag, isn't	13:20:30
24	that employee theft regardless of whether there's	13:20:39
25	some ancillary benefit to IP in increasing its	13:20:41

1	diverse spend target numbers?	13:20:44
2	A I can't comment on that. It's still being	13:20:47
3	evaluated at this time.	13:20:58
4	Q Look at the second full photograph on Page	13:20:59
5	12. It says DGS and Mid-South qualified as	13:21:18
6	diverse or minority-owned business under IP's	13:21:25
7	supplier diversity program. DGS and Mid-South	13:21:29
8	provided value to IP through both goods and	13:21:32
9	services and their participation in IP's supplier	13:21:35
10	diversity program. These entities entered into	13:21:40
11	Tier 1 and Tier 2 arrangements similar to many	13:21:43
12	other IP diverse or minority-owned business. All	13:21:47
13	relevant agreements with DGS and Mid-South were	13:21:51
14	approved through IP's corporate channels and not	13:21:54
15	by Jagannath acting alone. Like other diverse or	13:21:58
16	minority-owned business in the specialty chemicals	13:22:01
17	group, DGS and Mid-South did not have the ability	13:22:05
18	to produce the chemicals used by IP, which was	13:22:07
19	known to IP.	13:22:13
20	Okay. Do you see that paragraph?	13:22:14
21	A Yes, I do.	13:22:16
22	Q It says DGS and Mid-South provided value	13:22:16
23	to IP through both goods and services and their	13:22:16
24	participation in the supplier diversity program.	13:22:26
25	What services were DGS and Mid-South	13:22:26

1 providing value to IP under these arrangements as 13:22:29
2 you are referring to in this answer on Page 12? 13:22:33

3 A Well, from the materials provided, there 13:22:44
4 is indication that employees of DGS and Mid-South 13:22:46
5 were interacting with various individuals at the 13:22:50
6 mills, and they were also ensuring that the 13:22:56
7 chemicals that were being -- that were ordered 13:23:03
8 were being -- were actually being delivered in the 13:23:06
9 appropriate quantities pursuant to the orders as 13:23:09
10 well during this time period. 13:23:13

11 Q What individuals at DGS do you contend 13:23:17
12 were doing that? 13:23:25

13 A That were ensuring that goods were being 13:23:30
14 delivered? 13:23:33

15 Q Yes. 13:23:34

16 A I don't have the exact names offhand. 13:23:34

17 Q What individuals at Mid-South do you 13:23:37
18 contend were doing it? 13:23:42

19 A I don't have the names offhand at this -- 13:23:44
20 at this moment. I don't recall. 13:23:49

21 Q Now, you said on the prior page that 13:23:50
22 whatever services DGS and Mid-South were providing 13:23:57
23 did not approach the amount of the price markup it 13:24:00
24 was charging to IP. 13:24:04

25 Do you recall that? 13:24:05

1	A On Page 11?	13:24:06
2	Q Yeah, bottom of Page 11.	13:24:15
3	A Yes, I see the bottom of Page 11. Yes.	13:24:17
4	Q So you acknowledge for whatever services	13:24:29
5	DGS and Mid-South were providing, they were	13:24:32
6	substantially overcharging IP for those services;	13:24:35
7	isn't that right?	13:24:41
8	MR. MURPHY: Objection as to form.	13:24:41
9	A I'm not in agreement with the statement	13:24:49
10	that you made.	13:24:51
11	Q Well, how much --	13:24:52
12	A As far as what was written on the page.	13:24:53
13	Q Well, that's -- that's what you said on	13:24:55
14	Page 11. You said that the value of the services	13:24:57
15	didn't approach the amount being charged to IP?	13:25:01
16	Aren't you saying that whatever services	13:25:07
17	DGS or Mid-South provided, the value of those	13:25:09
18	services were well below the price markup it was	13:25:12
19	charging.	13:25:17
20	MR. MURPHY: Objection as to form.	13:25:17
21	A I would defer to the expert reports on	13:25:24
22	that.	13:25:26
23	Q But you do agree with the statement that	13:25:27
24	Beazley made in its answer, that the value of the	13:25:35
25	services that Tier 1 suppliers like DGS and	13:25:38

1 Mid-South were providing did not approach the 13:25:42
2 amount of the price markup they were charging IP, 13:25:44
3 correct? 13:25:47

4 A From the sentence on the bottom of 13:25:48
5 Page 11, yes, that's what we provided, what 13:25:59
6 Beazley provided. 13:26:03

7 Q Now, did you believe that DGS was a 13:26:03
8 legitimate business organization? 13:26:06

9 A Beazley can't really opine on the 13:26:08
10 legitimacy of their corporate organization. 13:26:25

11 Q Does Beazley believe that Mid-South was a 13:26:28
12 legitimate business organization? 13:26:31

13 A Again, Beazley is not in a position to 13:26:34
14 opine on the legitimacy of Mid-South. 13:26:43

15 Q Do you understand that Mid-South was 13:26:46
16 created by Jag and Shiv to make it look like there 13:26:52
17 was a different diverse entity for one of the 13:26:55
18 majority suppliers that did not want to do 13:26:58
19 business with DGS when, in fact, Mid-South was 13:27:01
20 also owned and controlled by Jag's brother, Shiv? 13:27:04
21 Did you know that to be a fact? 13:27:07

22 MR. MURPHY: Object as to form. 13:27:10

23 A Again, I can't comment on that. 13:27:13

24 Q Well, did you understand that Mid-South 13:27:28
25 was created because Solenis said it didn't want to 13:27:30

1 do business with DGS because DGS knew the pricing
2 of its competitors Nalco? Do you recall that
3 evidence in the record?

13:27:34

13:27:37

13:27:42

4 A I don't recall that exact statement.

13:27:43

5 Q Well, do you recall that Shiv controlled
6 both DGS and Mid-South when it was created to
7 address Solenis's concern that Solenis didn't want
8 to do business with DGS?

13:27:50

13:27:52

13:27:57

13:28:03

9 A I don't recall that specific item.

13:28:05

10 Q At the bottom of Page 12, it says in the
11 last paragraph, IP made payments to DGS and/or
12 Mid-South between 2011 and 2020. During this
13 period, DGS and Mid-South provided chemicals and
14 services to various of IP's mills. All of IP's
15 contracts with DGS and Mid-South were entered into
16 in the ordinary course of business.

13:28:11

13:28:21

13:28:26

13:28:29

13:28:30

13:28:34

13:28:38

17 Do you see that?

13:28:41

18 A Yes, I do.

13:28:42

19 Q Was it in the ordinary course of business
20 for Jag to deceive his superiors by claiming that
21 they were saving money using DGS and Mid-South
22 when, in fact, IP was paying more money by using
23 DGS and Mid-South?

13:28:43

13:28:49

13:28:57

13:29:00

13:29:03

24 MR. MURPHY: Objection.

13:29:05

25 Q Is that normal course of business in your

13:29:06

1	mind?	13:29:08
2	MR. MURPHY: Objection as to form.	13:29:09
3	A Can you repeat the last part of your	13:29:10
4	question, please?	13:29:16
5	Q Yeah. Do you believe it's in the ordinary	13:29:18
6	course of business for IP to enter into contracts	13:29:20
7	with DGS and Mid-South when Jag was deceiving his	13:29:23
8	superiors by representing that they would be	13:29:27
9	saving money by doing business with DGS and	13:29:32
10	Mid-South when, in fact, they were going to be	13:29:35
11	paying more money by using DGS and Mid-South by	13:29:37
12	just dealing directly with the suppliers providing	13:29:44
13	the chemicals?	13:29:46
14	MR. MURPHY: Objection as to form.	13:29:52
15	A I'm sorry. Can you repeat your question?	13:29:54
16	Q Yeah. When you said that all contracts	13:30:12
17	with DGS and Mid-South were entered into in the	13:30:15
18	ordinary course of business, do you think it's the	13:30:19
19	ordinary course of business when Jag is deceiving	13:30:20
20	superiors and telling them that entering into a	13:30:26
21	contract with DGS and Mid-South would save money	13:30:29
22	for the company when, in fact, in reality, it was	13:30:33
23	going to cost extra money to the company?	13:30:37
24	MR. MURPHY: Same objection.	13:30:40
25	A I don't recall the statements that may	13:30:41

1 have been made by Jag, but we do understand that 13:30:44
2 they -- you know, the various agreements between 13:30:47
3 the insured and DGS and Mid-South were entered 13:30:51
4 through sort of normal channels and that, as 13:31:00
5 stated, were known to employees in the global 13:31:06
6 sourcing department as well, as well as is 13:31:10
7 insurance diversity supplier program. 13:31:12

8 Q And did you read the testimony of Jag's 13:31:15
9 superiors, Mickey Rivers and Metrick Houser? 13:31:18

10 A I have not. 13:31:22

11 Q Did you see testimony that they relied on 13:31:24
12 Jag to be truthful and subsequently found out that 13:31:29
13 he was not truthful in representing what these 13:31:32
14 contracts with DGS and Mid-South were all about? 13:31:36

15 MR. MURPHY: Objection as to form. 13:31:39

16 A Again, I've not read their testimony. 13:31:40

17 Q Don't you think it would be important to 13:31:48
18 read their testimony to determine whether it was 13:31:51
19 ordinary course of business when Jag presented 13:31:53
20 these contracts with DGS and Mid-South to his 13:31:56
21 superiors and never told them that DGS and 13:31:59
22 Mid-South were companies owned and controlled by 13:32:02
23 his brother? 13:32:07

24 MR. MURPHY: Objection as to form. 13:32:08

25 A What is your question with regard to that? 13:32:10

1	Can you repeat that, please?	13:32:18
2	Q Yeah. You said you hadn't read their	13:32:19
3	testimony. Why haven't you read their testimony	13:32:21
4	when you're making statements that everything was	13:32:31
5	approved by Jag's superiors, and his superiors are	13:32:34
6	testifying that Jag lied to them and	13:32:40
7	misrepresented information about these deals when	13:32:42
8	they signed off on them? Wouldn't that be	13:32:47
9	important to your evaluation of this claim?	13:32:50
10	MR. MURPHY: Objection as to form.	13:32:54
11	A Again, I have not read their testimony.	13:32:56
12	Q Do you intend to read their testimony?	13:33:03
13	Do you have the question?	13:33:26
14	A Potentially.	13:33:32
15	Q Do you understand generally that his	13:33:34
16	superiors, Mickey Rivers and Metrick Houser,	13:33:50
17	testified that they relied on Jag to be honest and	13:33:54
18	forthcoming, but it turns out that Jag was	13:33:57
19	misrepresenting the nature of these deals with DGS	13:34:02
20	and Mid-South? Do you understand generally, even	13:34:08
21	if you haven't read their testimony, that that's	13:34:12
22	the nature of what they were saying?	13:34:14
23	MR. MURPHY: Objection as to form.	13:34:18
24	A Again, I can't speak to what they said or	13:34:22
25	did not say in their testimony.	13:34:26

1 Q Well, isn't that how an employee thief 13:34:27
2 often is able to accomplish theft, by abusing the 13:34:32
3 trust that their superiors have in them, and thus 13:34:36
4 the superiors don't check everything that they're 13:34:43
5 doing, but rather rely on them to be honest and 13:34:45
6 truthful, and they abuse that trust? Isn't that a 13:34:48
7 pretty typical scenario for employee theft? 13:34:51

8 A It could potentially be the case. 13:34:54

9 Q Now, you say at the top of Page 13. Would 13:35:02
10 you look at that? It says various of the DGS and 13:35:20
11 Mid-South contracts provided for these companies 13:35:27
12 to deliver various services, including inventory 13:35:29
13 management, evaluation of new products, and tank 13:35:32
14 monitoring. 13:35:35

15 And then you cite a number of documents to 13:35:36
16 support Beazley's statement. Do you see that? 13:35:38

17 A Yes, I do. 13:35:44

18 Q Like 4 or 5 documents. Let's take a look 13:35:47
19 at some of those documents. 13:35:51

20 MR. SYLVESTER: If we could, would you 13:35:55
21 pull up Exhibit 8 into the chat box? And while 13:35:57
22 we're at it, put Exhibit 9 as well. 13:36:03

23 (Exhibits 8 and 9 were marked for 13:36:05
24 identification and are attached to the 13:36:05
25 transcript.) 13:36:21

1	MR. SYLVESTER: Harold, I don't see 8	13:36:21
2	or 9. Have you posted those? There's 8. Can you	13:36:23
3	open 8?	13:36:28
4	BY MR. SYLVESTER:	13:36:46
5	Q Do you have Exhibit 8 open?	13:36:46
6	A Just one moment.	13:36:48
7	Yes, I have Exhibit 8 open.	13:37:03
8	Q Okay. Go to the third and last page,	13:37:05
9	which is the Bates No. 1468404 that you cited in	13:37:07
10	your interrogatory responses, the specialty	13:37:12
11	chemical contract extension amendment dated	13:37:14
12	September 19th, 2019.	13:37:19
13	Do you see that?	13:37:20
14	A Yes. Yes, I do.	13:37:21
15	Q And like in Paragraph 2, it says, DGS will	13:37:23
16	assist the mill in evaluating newer products if	13:37:33
17	approved by the mill in an effort to reduce the	13:37:34
18	usage and/or improve the functional properties of	13:37:37
19	the product they manufactured.	13:37:39
20	Do you see that?	13:37:41
21	A Yes, I do.	13:37:42
22	Q No. 3 says DGS will evaluate the use of a	13:37:44
23	Pareto system in alignment by Nalco and if	13:37:50
24	approved by the mill in an effort to reduce the	13:37:52
25	chemical application.	13:37:56

1	Do you see that?	13:37:58
2	A Yes, I do.	13:37:59
3	Q Now, this document is not signed by	13:37:59
4	anybody from International Paper, but it's signed	13:38:02
5	by Shiv, right?	13:38:05
6	Do you see his signature?	13:38:11
7	A Yes, I see it. Yes, I do.	13:38:14
8	Q Now, this document was drafted by Jag,	13:38:16
9	right?	13:38:19
10	Well, let me ask the question this way.	13:38:36
11	If you go to the previous page, you'll see that	13:38:39
12	there's an email of Jyotika Balsara of Diversified	13:38:41
13	Global Sourcing to Jag enclosing the specialty	13:38:51
14	chemicals contract extension agreement. Right?	13:38:56
15	Do you see that?	13:38:57
16	A Yes, I do.	13:38:58
17	Q And so this is a communication between Jag	13:38:59
18	and Shiv talking about the extension agreement,	13:39:05
19	right?	13:39:07
20	A Page two?	13:39:07
21	Q Yes.	13:39:12
22	A Well, it looks like it's an email from --	13:39:12
23	let me see -- okay. I see it's from Balsara to	13:39:27
24	Jag and Shiv, yes.	13:39:40
25	Q Right. Balsara works for D GS, right?	13:39:41

1 A Well, her email is a diversified global
2 sourcing email domain, yes.

3 Q Okay. But you understand that Jag and
4 Shiv were alleged co-conspirators in this alleged
5 employee theft scheme, right?

6 A That's what's been alleged, yes.

7 Q So the fact that they have a document
8 between the two of them that says that DGS is
9 providing services, that doesn't mean that they're
10 actually providing services; this could just be
11 paper that they're generating to cover their
12 tracks and to make it look like they're providing
13 services even though they're not. Isn't that
14 possible?

15 A Potentially. Potentially, yes.

16 Q But then why is Beazley relying on this
17 document as evidence that DGS was providing
18 services in connection with this contract?

19 A It's not the only document that we
20 reference.

21 Q Okay. Let's look at the next document,
22 Exhibit 9. Tell me when you have that up. That's
23 the next one that you list in response to this
24 interrogatory to support your statement about the
25 services that they provided. Tell me when you

1	have Exhibit 9.	13:41:22
2	A Okay. I have Exhibit 9 open.	13:41:37
3	Q Okay. It's entitled information for	13:41:39
4	Mickey. This was -- if you look at the bottom	13:41:41
5	Bates numbers ending in numbers 149126 and 127,	13:41:44
6	those are the documents you're citing at the top	13:41:50
7	of Page 13 of your interrogatory answers to	13:41:54
8	support the notion that services were being	13:41:58
9	provided, right?	13:42:03
10	A Yes.	13:42:04
11	Q And if you look at -- like under the	13:42:08
12	heading diversity -- and Mickey is referring to	13:42:14
13	Mickey Rivers, Jag's superior, right?	13:42:17
14	Do you understand that?	13:42:48
15	A Is there a question?	13:42:49
16	Q Yeah. Do you understand that Mickey	13:42:51
17	Rivers is the Mickey that is on the title, is	13:42:53
18	Mickey Rivers, Jag's superior?	13:42:57
19	A Yes.	13:43:00
20	Q And this is written by Jag to report to	13:43:01
21	his superior this document, Exhibit 9, right?	13:43:07
22	A Yes.	13:43:10
23	Q So if you look at Paragraph 3 under	13:43:19
24	diversity, it says diversify global sourcing,	13:43:21
25	which is DGS, to go from a Tier 2 supplier to a	13:43:25

1 Tier 1 supplier addressing items such as 13:43:28
2 installing telemetry in Texarkana, to supply ASA 13:43:31
3 at Selma on a cost per Al ton basis, new rosin 13:43:31
4 size injectors at Campti, remote tank monitoring 13:43:31
5 at Georgetown, and supply hypo and wet strength. 13:43:47
6 That's Jag describing what DGS is doing, 13:43:50
7 right? 13:43:53
8 A Yes, that's what he wrote in the document. 13:43:54
9 Q And he's the alleged thief, right? Just 13:44:00
10 because he writes a document saying that DGS is 13:44:10
11 doing a bunch of things, that doesn't mean that 13:44:14
12 they're actually doing it if he's trying to cover 13:44:17
13 his tracks and make it look like DGS is a 13:44:19
14 legitimate company performing legitimate services, 13:44:23
15 right? 13:44:28
16 That's not dispositive of the question of 13:44:28
17 whether DGS is really providing these services 13:44:30
18 just based on what Jag is telling his superior, is 13:44:33
19 it? 13:44:36
20 A Well, this document is summarizing the 13:44:37
21 activities of DGS and others. 13:44:50
22 Q Right. But if Jag is stealing from the 13:44:53
23 company by diverting contracts to DGS and he wants 13:44:56
24 to justify it to his superior, he can well be 13:45:02
25 lying about what DGS is doing to make it look like 13:45:08

1 they're actually earning their profit when, in 13:45:11
2 fact, they're not doing any of the services or not 13:45:13
3 doing all of these services? Isn't that what 13:45:16
4 thieves do sometimes to cover their tracks? 13:45:19

5 MR. MURPHY: Objection as to form. 13:45:26

6 A I can't really hypothesize on what a thief 13:45:32
7 may do -- 13:45:36

8 Q Well -- 13:45:37

9 A -- or not do. 13:45:38

10 Q Is Beazley believing what DGS says it does 13:45:39
11 just because of what Jag says in a document to his 13:45:45
12 superior? 13:45:48

13 A Well, as stated previously, summaries of 13:45:48
14 activities of multiple entities on the document. 13:45:59

15 Q Right. But Jag could be telling the truth 13:46:02
16 about some of the other entities but lying about 13:46:08
17 what DGS is doing to cover his tracks, right? 13:46:10
18 Isn't that possible? 13:46:14

19 MR. MURPHY: Objection as to form; calls 13:46:18
20 for speculation. 13:46:21

21 A I really couldn't say. 13:46:26

22 Q Well, does Beazley believe statements by 13:46:28
23 Jag as to what DGS and Mid-South were doing in 13:46:32
24 performing services during the alleged employee 13:46:38
25 theft scheme simply because Jag said so? 13:46:40

1 MR. MURPHY: Objection as to form;
2 overbroad.

3 A I mean, again, as I stated earlier, this
4 document summarizing the activities of multiple
5 parties.

6 Q Does Beazley believe what Jag is saying
7 about what DGS does at these various mills?

8 A Again, there were indications that there
9 was interactions with individuals from DJS with
10 parties at the mills, and we do understand that
11 the chemicals ordered were delivered.

12 Q Okay. Let's look at the next document
13 that you cited in support of DGS performing
14 services. It's the -- we'll look at Exhibit 10.

15 MR. SYLVESTER: Can you put Exhibit 10
16 into the chat box?

17 (Exhibit 10 was marked for identification
18 and is attached to the transcript.)

19 BY MR. SYLVESTER:

20 Q This is the August 27th, 2017,
21 presentation from DGS to IP, presentation
22 outlining services provided by DGS. Do you see
23 that on the fourth line of your interrogatory
24 answer on Page 13?

25 A Which exhibit were you just referring to?

1	You said Exhibit 10, and Exhibit --	13:48:31
2	Q Yeah. Exhibit 7, your interrogatory	13:48:33
3	answers where you're listing the support, the	13:48:35
4	document supporting the notion that DGS is	13:48:38
5	providing services to IP for the money that it's	13:48:41
6	charging.	13:48:46
7	The third document you list is an	13:48:47
8	August 27th, 2015, presentation from DGS to IP	13:48:49
9	outlining services provided by DGS. Do you see	13:48:54
10	your reference to that in support that Beazley is	13:48:58
11	relying on for the statement that DGS was	13:49:01
12	providing services to IP?	13:49:04
13	A Sorry, I'm going back and forth.	13:49:06
14	And your question is if that is	13:49:25
15	Exhibit 10?	13:49:40
16	Q No. I'm asking you -- we'll look at	13:49:41
17	Exhibit 10 in a second, but this August 27th,	13:49:44
18	2015, presentation from DGS to International	13:49:47
19	Paper --	13:49:50
20	A Yes.	13:49:51
21	Q -- is that a document that Beazley is	13:49:51
22	citing in its interrogatories and relying on for	13:49:55
23	evidence that DGS provides services to IP for the	13:49:59
24	money that it's charging?	13:50:02
25	A Yes, it is cited within our -- within our	13:50:03

1	interrogatories.	13:50:14
2	Q Okay. So that's one of the documents that	13:50:14
3	Beazley's relying on to support the contention	13:50:20
4	that DGS provides valuable services to IP,	13:50:22
5	correct?	13:50:26
6	MR. MURPHY: Objection as to form. You	13:50:27
7	can answer.	13:50:29
8	A Well, as stated, it does say presentation	13:50:29
9	outlining services provided by DGS.	13:50:37
10	Q Okay. So let's look at the document,	13:50:40
11	Exhibit 10. Tell me when you have it open.	13:50:42
12	A I do have it open.	13:50:47
13	Q Okay. And you see it's diversified --	13:50:48
14	first page, Diversified Global Sourcing, Inc., our	13:50:52
15	focus is the customer. A presentation to	13:50:56
16	International Paper dated August 27th, 2015,	13:50:59
17	right?	13:51:01
18	A Yes.	13:51:02
19	Q This is the document referred to in your	13:51:06
20	interrogatory answers, correct?	13:51:09
21	A Yes.	13:51:10
22	Q So go to the second page of the document.	13:51:10
23	Okay. Tell me when you have it.	13:51:22
24	A Page 2?	13:51:24
25	Q Yeah, Page 2. It's page number ending	13:51:25

1	0856.	13:51:29
2	A I have it open.	13:51:40
3	Q Okay. You see the first bullet point, it	13:51:41
4	says our customers are our employer.	13:51:44
5	Do you see that?	13:51:47
6	A Yes.	13:51:48
7	Q Now, you realize that DGS only had one	13:51:48
8	customer, right? International Paper. It didn't	13:51:51
9	have multiple customers, correct?	13:51:54
10	A That's what's been reported.	13:51:56
11	Q Okay. Even though it continues to refer	13:52:02
12	to multiple customers on this page, you understand	13:52:04
13	that that is incorrect, that they have one	13:52:06
14	customer that's paying them, International Paper.	13:52:11
15	Okay? Is that right?	13:52:15
16	MR. MURPHY: Objection as to form.	13:52:17
17	A That's what's been reported, yes.	13:52:24
18	Q Okay. Go to the next page. And you see	13:52:26
19	the next page, which is ending in Bates No. 0857.	13:52:28
20	A Yes.	13:52:38
21	Q You see the first point says about DGS	13:52:39
22	antifoam.	13:52:43
23	Do you see that?	13:52:44
24	A Yes, I do.	13:52:45
25	Q Do you see two lines down, DGS's antifoam	13:52:48

1	products.	13:52:54
2	Do you see that?	13:52:54
3	A Yes, I do.	13:52:55
4	Q You recognize that DGS doesn't have any	13:52:56
5	antifoam products, isn't that right?	13:52:59
6	A I can't recall that particular item.	13:53:02
7	Q DGS doesn't make any products. Aren't you	13:53:10
8	aware of that?	13:53:17
9	A Again, I don't recall specifically on that	13:53:18
10	particular item.	13:53:27
11	Q Okay. Look at the next page. At the	13:53:28
12	heading, it says about DGS, Nanjing, referring to	13:53:36
13	Nanjing in China.	13:53:41
14	Do you see that? Do you have that page?	13:53:48
15	A Yes, I do.	13:53:50
16	Q Okay. Now, you realize, don't you, that	13:53:51
17	DGS doesn't have a Nanjing operation or a Nanjing	13:53:56
18	facility such as pictured here on this slide;	13:54:03
19	isn't that right?	13:54:08
20	MR. MURPHY: Objection as to form.	13:54:09
21	A That's what's been reported.	13:54:10
22	Q This picture of DGS Nanjing is a picture	13:54:18
23	of another company's facility that they took off	13:54:22
24	the Internet and stuck in this PowerPoint; isn't	13:54:24
25	that right?	13:54:28

1	MR. MURPHY: Objection as to form; calls	13:54:30
2	for speculation.	13:54:32
3	A I don't know the source of the picture.	13:54:32
4	Q If you look to the lower left and it says	13:54:41
5	DGS Nanjing owned 41 Chinese national patents and	13:54:43
6	one international patent. Do you see that?	13:54:49
7	A Yes, I do.	13:54:51
8	Q That's a complete fabrication, right? You	13:54:52
9	know that DGJ doesn't own any patents. Are you	13:54:55
10	aware of that?	13:55:01
11	A Beazley is not able to comment on any	13:55:02
12	patent that they may or may not have.	13:55:09
13	Q Well, didn't you investigate before you	13:55:12
14	relied on this document as evidence to support the	13:55:14
15	notion that DGS provides valuable services to	13:55:16
16	International Paper, did you investigate any of	13:55:21
17	the facts in this document that are publicly	13:55:23
18	available to see whether this was a legitimate	13:55:27
19	document or whether it was a complete fabrication?	13:55:30
20	A Beazley has reviewed the materials.	13:55:33
21	Q I'm sorry?	13:55:50
22	A Beazley has reviewed the materials.	13:55:51
23	Q Yeah. You reviewed the document, but did	13:55:53
24	you look behind it to see whether any of the facts	13:55:54
25	in here are accurate?	13:55:57

1 A Again, as just stated, Beazley has
2 reviewed the materials.

3 Q Go to the next page, 0859. This
4 representation to IP about DGS Nanjing. It says
5 the largest antifoam production base in Asia.

6 That's a complete lie, isn't it? Have you
7 done any research to see whether DGS has any
8 operation in Asia to confirm that it does not?
9 Did you look into that?

10 A Again, we have been reviewing the
11 materials.

12 Q Yeah. You're reviewing this document and
13 you said you're relying on it, Beazley is relying
14 on this document, but this document is a complete
15 fabrication.

16 Is that something reasonable for Beazley
17 to rely on to support the statement in its
18 interrogatory answers that DGS provides valuable
19 services to IP?

20 MR. MURPHY: Objection as to form;
21 argumentative.

22 A Well, again, Beazley does understand that
23 the chemicals that were ordered were delivered and
24 they were paid for with respect to the claim.

25 Q DGS is making a presentation to

1 International Paper in 2015 that is filled with
2 fraudulent statements and misrepresentations,
3 doesn't that tell you something about DGS not
4 being a legitimate arms-length business
5 organization doing business with IP?

6 A Well, again, as I just stated, Beazley
7 does understand that the chemicals that were
8 ordered as far as the transactions in question
9 were paid for and delivered to the insured.

10 Q That doesn't answer my question.

11 My question is does the fact that DGS is
12 outright lying to IP about its operations, about
13 its products, about its facilities, doesn't that
14 tell you something about whether DGS is or is not
15 a legitimate organization doing business with
16 International Paper in the ordinary course of
17 business?

18 MR. MURPHY: Objection as to form;
19 compound; assumes facts not in evidence.

20 You can answer if you can. Well, as
21 stated previously, I can't comment on DGS's
22 structure.

23 Q Well, have you looked at any of the
24 documents or reviewed any of the testimony of DGS
25 employees or former employees to learn that none

13:58:00
13:58:05
13:58:12
13:58:14
13:58:18
13:58:19
13:58:32
13:58:34
13:58:40
13:58:42
13:58:46
13:58:49
13:58:53
13:58:56
13:59:01
13:59:05
13:59:07
13:59:10
13:59:11
13:59:14
13:59:25
13:59:28
13:59:34
13:59:36
13:59:39

1	of this is true?	13:59:44
2	MR. MURPHY: Objection as to form.	13:59:49
3	A Beazley understands there's additional	14:00:01
4	depositions that will be held within the next --	14:00:03
5	looks like not next week but the following week.	14:00:07
6	Q Sorry.	14:00:11
7	A Go ahead.	14:00:13
8	Q Go, to example, to Page 12 of this	14:00:14
9	presentation, which is Document No. 0866. Where	14:00:18
10	it's talking about a patent number that it has for	14:00:32
11	paper machines and coatings.	14:00:36
12	Do you see that?	14:00:39
13	A Yes, I do.	14:00:40
14	Q And DGS is representing it has this	14:00:41
15	patent, No. 200910184384.6 issued in 2009 for	14:00:45
16	paper machine/coatings.	14:00:54
17	Do you see that?	14:00:57
18	A Yes, I do.	14:00:58
19	Q Did Beazley do any investigation to look	14:00:59
20	up in the public record this patent, whether in	14:01:04
21	fact DGS had this patent, only to find out that	14:01:09
22	DGS is not the owner of this patent; that another	14:01:12
23	corporation owns this patent and DGS is passing it	14:01:16
24	off as its own?	14:01:19
25	A Beazley's not able to comment on the	14:01:21

1	patent number listed.	14:01:30
2	Q I'm asking did DG -- I'm sorry, did	14:01:32
3	Beazley do an investigation before relying on this	14:01:35
4	document as support for its position, to do a	14:01:38
5	public records such of these alleged DGS patents	14:01:42
6	to see if they were really DGS patents?	14:01:45
7	MR. MURPHY: Objection as to form. The	14:01:48
8	witness is instructed not to speculate. If you	14:01:50
9	know, you can answer.	14:01:53
10	A I can't comment on that. I'm not aware of	14:01:54
11	that.	14:02:02
12	Q Can you go to the second to the last page	14:02:03
13	of this document, Page 39? And it's Document No.	14:02:05
14	893.	14:02:18
15	A 893?	14:02:19
16	Q Yeah.	14:02:21
17	A Okay. I have it open.	14:02:22
18	Q The heading for this slide says why DGS?	14:02:23
19	Okay? Do you see that?	14:02:32
20	A Yes, I do.	14:02:36
21	Q After No. 1 where it says diversity	14:02:38
22	supply: minority-owned business that increases	14:02:41
23	supplier diversity.	14:02:45
24	No. 2 says that DGS specializes in the	14:02:47
25	development, research, manufacturing, and	14:02:50

1	implementation of defoamer.	14:02:52
2	Do you see that?	14:02:54
3	A Yes, I do.	14:02:55
4	Q And do you realize that that is a complete	14:02:56
5	fabrication, that DGS doesn't develop, it doesn't	14:02:59
6	research, it doesn't manufacture, and it doesn't	14:03:03
7	implement defoamer?	14:03:06
8	A As stated previously, I'm unable to	14:03:09
9	comment on DGS's structure and their operations.	14:03:17
10	Q Do you believe this Exhibit 10 is a	14:03:23
11	reliable document for Beazley to rely on -- to	14:03:26
12	rely on it for the contention that Beazley is	14:03:31
13	making that DGS provides valuable services to IP	14:03:33
14	in exchange for the money it was paid?	14:03:39
15	A I'm not able to speculate on that.	14:03:43
16	Q Does the fact that DGS put together this	14:03:58
17	fraudulent document to misrepresent itself to IP,	14:04:03
18	does that lead you to believe that maybe the	14:04:09
19	people running DGS are not honest people?	14:04:12
20	MR. MURPHY: Objection as to form.	14:04:17
21	A Beazley's not able to comment on whether	14:04:20
22	DGS or Mid-South were honest or not.	14:04:30
23	Q But isn't that something you have to	14:04:35
24	determine in determining whether this is an	14:04:43
25	employee theft scheme versus an ordinary course of	14:04:46

1 business arrangement between IP and DGS? Don't
2 you have to determine are these characters telling
3 the truth, or are they lying? Isn't that part of
4 your evaluation?

5 A Well, we are investigating things in
6 totality, but as stated previously, we understand
7 that the chemicals, the specialty chemicals and
8 the quantities that were ordered, were delivered
9 to IP and also paid for.

10 Q Right. And you also said in your
11 interrogatories that DGS and Mid-South were
12 overcharging well beyond any value they were
13 providing in services. Do you recall that in your
14 interrogatory answer?

15 MR. MURPHY: Objection as to form;
16 misstates the testimony and the document. Where
17 does it say overcharging?

18 MR. SYLVESTER: It says at the bottom of
19 Page 11, where a Tier 1 supplier did provide some
20 form of additional service which would transport
21 process improvements, packaging, inventory
22 management, purchases for distribution, the value
23 of those services did not approach the amount of
24 the price markup it charged IP. That's what I was
25 referring to by overcharging.

Transcript of Pia Ellis, Volume 2
Conducted on January 3, 2024

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1	MR. MURPHY: I stand on my objection.	14:06:15
2	THE WITNESS: And what is the question	14:06:28
3	again, please?	14:06:29
4	BY MR. SYLVESTER:	14:06:30
5	Q Don't you have to decide in making your	14:06:30
6	coverage determination who's telling the truth and	14:06:34
7	who's lying about whether this is a legitimate	14:06:37
8	ordinary course of business arrangement between IP	14:06:41
9	and DGS? Isn't that part of your evaluation?	14:06:43
10	A Well, the policy speaks to whether there	14:06:48
11	was employee dishonesty.	14:06:58
12	Q And if Jag is directing money to his	14:07:05
13	brother's company and his brother's company is a	14:07:08
14	fraudulent company that misrepresents the IP what	14:07:10
15	it owns, what it does, what activities it engages	14:07:16
16	in, what patents it holds, doesn't that tell	14:07:19
17	you -- doesn't that inform Beazley that this is	14:07:24
18	not an ordinary course of business relationship	14:07:29
19	between IP and DGS?	14:07:33
20	MR. MURPHY: Objection as to form;	14:07:36
21	incomplete hypothetical. You can answer if you	14:07:38
22	have an answer.	14:07:41
23	A I would just say, on behalf of Beazley,	14:07:41
24	potentially.	14:07:58
25	Q Let's look at the next document you cited	14:07:59

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1 in your interrogatory answers to support this 14:08:06
2 statement that DGS delivered services to IP. 14:08:08

3 MR. SYLVESTER: I'll ask Exhibit 11 be put 14:08:15
4 into the chat, and also put in Exhibit 12 while 14:08:18
5 we're at it. 14:08:22

6 (Exhibits 11 and 12 were marked for 14:08:24
7 identification and are attached to the 14:08:24
8 transcript.) 14:08:25

9 BY MR. SYLVESTER: 14:08:25

10 Q If you look back at your interrogatory 14:08:25
11 answer, Exhibit 7 on Page 13, the next document 14:08:27
12 you list after that PowerPoint presentation that 14:08:32
13 we just reviewed is an August 13th, 2019, email 14:08:37
14 from Jag to R. Kuenzinger. 14:08:43

15 A You said which page on Exhibit 7? 14:08:49

16 Q Exhibit 7, Page 13. 14:08:51

17 A Okay. 14:08:55

18 Q Where you're listing the documents that 14:08:56
19 Beazley relies on. We've looked at the first 14:08:58
20 three of the five. This is the fourth, 14:09:01
21 August 13th, 2019, email from Jag to Richard 14:09:05
22 Kuenzinger at International Paper. 14:09:13

23 A Yes. 14:09:21

24 Q And in his email on August 13th, he 14:09:21
25 responds to Mr. Kuenzinger asking, you know, what 14:09:25

1	is the value that DGS is providing?	14:09:28
2	And you can see that question at the top	14:09:35
3	of the next page, Page 0541. On the first page,	14:09:37
4	Page 0540, Jag responds on August 13th, 2019, at	14:09:44
5	11:08 a.m., there's, like, six bullet points.	14:09:51
6	The third one says DGS is the diversity	14:09:59
7	arm for Nalco. The value they bring to Georgetown	14:10:02
8	mill in firming up our Procter & Gamble business.	14:10:06
9	Procter & Gamble is the largest single customer	14:10:11
10	demanding diversity present.	14:10:11
11	And four, at the Georgetown mill, DGS also	14:10:14
12	monitors tank levels using telemetry avoiding	14:10:17
13	demurrage charges and shortages of products.	14:10:23
14	A Are you referring to Exhibit 11 now?	14:10:23
15	Q Yes.	14:10:25
16	A Hold on. I have to save it.	14:10:25
17	Okay. You're on Page 1?	14:10:33
18	Q Yes.	14:10:40
19	A Okay.	14:10:41
20	Q This is a document that you say supports	14:10:42
21	the notion that DGS is providing services for the	14:10:44
22	money that it's paid, and I was reading some of	14:10:49
23	the five -- six points that Jag is listing in his	14:10:53
24	email to Richard Kuenzinger who works at one of	14:10:58
25	the mills in IP, and I read 3 and 4.	14:11:02

1 And then Point 5 is at other mills, we 14:11:07
2 have had various value added contribution from 14:11:11
3 DGS. Safety, capital for tanks, tank telemetry, 14:11:14
4 et cetera. 14:11:19

5 Do you see that? 14:11:20

6 A Yes. 14:11:21

7 Q So all of this is being written by Jag, 14:11:21
8 right? 14:11:24

9 A It's an email from Jag, yes. 14:11:24

10 Q Just because he says things, that doesn't 14:11:30
11 make them true? If he's, in fact, stealing from 14:11:35
12 the company by diverting money to DGS improperly, 14:11:39
13 of course he's going to say that DGS is providing 14:11:43
14 valuable services in exchange for the money it's 14:11:46
15 being paid. Wouldn't you expect him if he was, in 14:11:49
16 fact, engaged in an employee theft scheme to say 14:11:52
17 things like that to other people at IP to try to 14:11:56
18 get them off the trail of investigating DGS? 14:12:03

19 MR. MURPHY: Objection as to form; calls 14:12:06
20 for speculation. You can answer. 14:12:08

21 A Potentially, but I couldn't say with 14:12:10
22 certainty that would be the case. 14:12:25

23 Q Okay. Let's look at the last document 14:12:27
24 that you listed, which is Exhibit 12. 14:12:30

25 This is a May 30th, 2019, email from Jag 14:12:40

1	to Metrick Houser and Marvin Donaldson.	14:12:49
2	A Is that in the chat?	14:12:58
3	MR. SYLVESTER: Can we put Exhibit 12 in	14:12:59
4	the chat, and also, Harold, while you're at it,	14:13:01
5	put in Exhibit 13?	14:13:05
6	(Exhibit 13 was marked for identification	14:13:07
7	and is attached to the transcript.)	14:13:08
8	BY MR. SYLVESTER:	14:13:32
9	Q Do you have 12 in the chat, Ms. Ellis?	14:13:32
10	MR. MURPHY: Yeah, it just popped up.	14:13:35
11	TECHNICIAN: You said 13 as well?	14:13:38
12	MR. SYLVESTER: Yes, 13. It's a	14:13:41
13	spreadsheet.	14:13:45
14	THE WITNESS: I have it open.	14:13:49
15	BY MR. SYLVESTER:	14:13:50
16	Q Okay. Here's an email --	14:13:50
17	A Exhibit 12?	14:13:52
18	Q Yes, Exhibit 12. And, again, this is a	14:13:53
19	document you cited in support of the notion that	14:13:55
20	DGS provides valuable services to IP.	14:14:00
21	And in the email at the bottom half of	14:14:04
22	this page, it's a May 30th, 2019, email from Jag	14:14:06
23	to Marvin Donaldson and Metrick Houser. Do you	14:14:15
24	see that?	14:14:17
25	A Yes.	14:14:18

1	Q Okay. And in that, he lists various	14:14:18
2	things about DGS. In Paragraph No. 1, it says,	14:14:27
3	Georgetown has accepted the importance of the	14:14:32
4	payment terms and acknowledges the importance of	14:14:35
5	diversity, contractual terms with P and G, and the	14:14:37
6	supply chain. This was an easy sale since DGS was	14:14:41
7	the lowest cost after the technical service in	14:14:44
8	telemetry and payment terms. While without all of	14:14:47
9	this, DGS was more expensive by \$8,000 per year?	14:14:51
10	And then point No. 2 for the Riegelwood	14:14:56
11	mill, Jag says DGS was the lowest even without any	14:15:01
12	of the credits, so this may go the DGS route.	14:15:05
13	Do you see that?	14:15:09
14	A Yes, I do.	14:15:10
15	Q So he's representing -- Jag is -- that it	14:15:11
16	would be lowest cost to go to DGS for the	14:15:14
17	Georgetown mill and the Riegelwood mill, but this	14:15:20
18	is Jag talking, right? Do you believe anything	14:15:24
19	Jag says just because he says it in trying to make	14:15:26
20	it seem like DGS is actually a value-added	14:15:29
21	provider for IP?	14:15:36
22	MR. MURPHY: Objection as to form.	14:15:38
23	A Well, we do see that the email was sent by	14:15:45
24	Jag to various individuals within IP.	14:15:56
25	Q Right. But if he's truly stealing from	14:16:02

1 the company by improperly diverting contract 14:16:07
2 dollars to DGS, you would expect him to tell his 14:16:10
3 superiors to say that it's a good deal for the 14:16:12
4 company to be dealing with DGS, right? Isn't that 14:16:16
5 what you would expect him to say to cover up what 14:16:19
6 he's doing? 14:16:22

7 MR. MURPHY: Objection as to form; calls 14:16:22
8 for speculation. 14:16:25

9 A Potentially it could be or could not be. 14:16:26

10 Q Right. But so for all of the documents 14:16:42
11 that you've cited are documents that are authored 14:16:44
12 by Jag or DGS to support the notion that DGS is 14:16:48
13 providing valuable services to International 14:16:54
14 Paper. Do you have any documents not authored by 14:16:57
15 Jag or Shiv or DGS or Mid-South that are singing 14:16:59
16 the praises of DGS as being a valuable supplier? 14:17:05

17 MR. MURPHY: Objection. Excuse me. 14:17:13

18 Have you completed your question? 14:17:16

19 MR. SYLVESTER: Yes. 14:17:18

20 MR. MURPHY: Objection as to form. 14:17:20

21 THE WITNESS: And what is your question 14:17:26
22 regarding the email? 14:17:27

23 BY MR. SYLVESTER: 14:17:29

24 Q Yeah. We just looked at a bunch of 14:17:29
25 documents that Beazley cited that support the 14:17:32

1 notion that DGS is providing valuable services to 14:17:35
2 International Paper for the money it's charging, 14:17:39
3 but they're all authored by either Jag or Shiv or 14:17:41
4 DGS. 14:17:45

5 Do you have -- and they're all alleged 14:17:46
6 co-conspirators in the theft. Do you have any 14:17:49
7 documents written by somebody else outside the 14:17:52
8 alleged conspiracy singing the praises of DGS or 14:17:55
9 Mid-South as providing valuable services to IP? 14:18:01

10 MR. MURPHY: Objection as to form. You 14:18:04
11 can answer. 14:18:06

12 A I don't recall the extent of other 14:18:07
13 documents. 14:18:16

14 Q The last document that you list is a 14:18:16
15 spreadsheet that was prepared by Jag. We marked 14:18:23
16 that as Exhibit 13. Can you open that? 14:18:30

17 A Okay. I'm opening it now. Just bear with 14:18:32
18 me for one second. 14:18:36

19 Okay. I have it. I have the Excel file 14:18:37
20 open. 14:19:07

21 Q Right. So if you go to the first tab, I 14:19:08
22 think it's Riegelwood. And this goes with the 14:19:14
23 prior document where Jag is providing cost numbers 14:19:16
24 for alternative suppliers for the Riegelwood mill. 14:19:20

25 And do you see that if you look in 14:19:27

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1	Column L, lo and behold, DGS is listed as having	14:19:30
2	the lowest net value spend after all the credits?	14:19:36
3	It's 126,000 versus the other suppliers listed who	14:19:41
4	have higher numbers?	14:19:50
5	A Yes, I do.	14:19:51
6	Q Okay. So this is what he's showing Marvin	14:19:52
7	Donaldson and Metrick Houser in the prior email we	14:19:58
8	looked at saying that DGS is the lowest supplier	14:20:01
9	after he gives them various credits for the --	14:20:04
10	what he calls the credit -- where is it here? --	14:20:12
11	tank telemetry, inventory management, own truck	14:20:27
12	fleet, truck driver safety and training, supplier	14:20:30
13	visits twice per year.	14:20:34
14	Do you see how he gets \$30,000 credit to	14:20:34
15	DGS to get that number down to 126,000?	14:20:38
16	A Yes.	14:20:45
17	Q Okay. And do you understand that DGS	14:20:46
18	doesn't have any trucks? It doesn't have a truck	14:20:58
19	fleet? Do you know that to be the case from the	14:21:00
20	evidence in the record?	14:21:03
21	A I don't recall to the extent that they do	14:21:12
22	or do not have a truck fleet.	14:21:16
23	Q They don't have a single truck. Don't you	14:21:18
24	know that?	14:21:21
25	A I don't recall on that item.	14:21:22

1	Q They don't do truck driver safety and	14:21:26
2	training. Aren't you aware of that?	14:21:32
3	A I don't recall regarding that particular	14:21:36
4	item.	14:21:44
5	Q So go to the Georgetown tab where he's	14:21:45
6	justifying Georgetown as the supplier in this	14:21:52
7	particular bidding process and shows, in column L,	14:21:59
8	that DGS is the lowest cost provider. It's	14:22:10
9	174,000 compared to higher numbers for other	14:22:15
10	suppliers.	14:22:19
11	Do you see that?	14:22:19
12	A Yes, I do.	14:22:20
13	Q And, again, this is Jag talking. Right?	14:22:23
14	This is Jag creating this document to justify	14:22:29
15	giving the business to DGS, right?	14:22:36
16	A Can you repeat your question, please?	14:22:40
17	Q Yeah. This Exhibit 13, which is the last	14:22:56
18	of the documents that you cite in support of	14:22:59
19	Beazley's statement that DGS is providing valuable	14:23:03
20	services to International Paper, it's another	14:23:08
21	document; in this case, a spreadsheet prepared by	14:23:10
22	Jag, right?	14:23:14
23	A I don't recall who created the	14:23:25
24	spreadsheet.	14:23:26
25	Q Well, if you -- if you'll accept my	14:23:30

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1 representation that this is prepared by Jag based 14:23:33
2 on the prior exhibit that we looked at, 14:23:37
3 Exhibit 12, to which this applies, does Beazley 14:23:40
4 have any document or any evidence generated by 14:23:47
5 somebody other than one of the co-conspirators -- 14:23:52
6 Jag, Shiv, Mid-South, DGS -- saying that DGS or 14:23:56
7 Mid-South provides valuable services in exchange 14:24:00
8 for the money that they were charging IP and the 14:24:03
9 markup that they were getting? 14:24:07

10 MR. MURPHY: Objection as to form; 14:24:09
11 overbroad. 14:24:11

12 A I don't recall offhand. 14:24:12

13 MR. SYLVESTER: Okay. Why don't we take a 14:24:24
14 ten-minute break. 14:24:25

15 MR. MURPHY: We'll come back at 2:35? 14:24:26

16 MR. SYLVESTER: Yeah. Thanks. 14:24:30

17 VIDEOGRAPHER: We are going off the 14:24:31
18 record. The time is 2:24 p.m. 14:24:32

19 (A recess was taken.) 14:24:34

20 VIDEOGRAPHER: We are back on the record. 14:36:44
21 The time is 2:36 p.m. 14:36:46

22 BY MR. SYLVESTER: 14:36:48

23 Q Ms. Ellis, we're back to Exhibit 7, the 14:36:48
24 interrogatory answer that was provided in response 14:36:54
25 to Interrogatory No. 2. I would like you to look 14:36:56

1	at Page 14 of Beazley's answer to Interrogatory	14:37:01
2	No. 2. Again, that's Exhibit No. 7.	14:37:05
3	Do you have Page 14 in front of you?	14:37:09
4	A Yes, I do.	14:37:12
5	Q If you look at the second to the last	14:37:13
6	paragraph on Page 14, it says that Jagannath did	14:37:17
7	not conceal the fact that he was negotiating	14:37:22
8	arms-length contracts with DGS and Mid-South	14:37:25
9	similar to other diverse or minority-owned	14:37:28
10	businesses.	14:37:31
11	Do you see that sentence?	14:37:32
12	A Yes, I do.	14:37:33
13	Q Do you recognize that Jag never revealed	14:37:34
14	to his supervisors that DGS and Mid-South were	14:37:39
15	companies controlled by his brother, Shiv Kumar?	14:37:46
16	A That he didn't do what? Can you repeat	14:37:52
17	that part?	14:37:56
18	Q Jag didn't tell his superiors that DGS and	14:37:57
19	Mid-South were owned and controlled by his	14:38:03
20	brother, Shiv Kumar?	14:38:05
21	A That's what's been reported, yes.	14:38:07
22	Q And, in fact, DGS and Mid-South were	14:38:13
23	themselves essentially owned and controlled by the	14:38:20
24	same person, Shiv Kumar; isn't that right?	14:38:26
25	A Yes, that's what's been reported.	14:38:30

1 Q So when you say that Jagannath did not 14:38:39
2 conceal the fact that he was negotiating 14:38:42
3 arms-length with DGS and Mid-South, how can 14:38:44
4 Beazley say that when he revealed to his superiors 14:38:50
5 that both of the companies were owned and 14:38:53
6 controlled by his brother? 14:38:55

7 A Well, from the information that we've 14:38:58
8 seen, he didn't -- Jagannath -- Jag didn't -- he 14:39:12
9 didn't disclose -- he didn't -- I mean, I don't 14:39:20
10 want to say didn't, did not, did not disclose. 14:39:23

11 He did indicate -- Jag did indicate that 14:39:27
12 he was negotiating contracts with DGS and 14:39:33
13 Mid-South. 14:39:36

14 Q Right. But he never told his superiors -- 14:39:39
15 Metrick Houser, Marvin Donaldson, Mickey Rivers -- 14:39:44
16 that those companies were owned and controlled by 14:39:50
17 his brother; isn't that right? 14:39:52

18 MR. MURPHY: Objection as to form. 14:39:55

19 A That's what's been reported. 14:39:56

20 Q And he never revealed to his superiors -- 14:39:58
21 Mickey Rivers, Marvin Donaldson, Metrick Houser -- 14:40:02
22 that some of the money that IP was paying to DGS 14:40:05
23 and Mid-South were being funneled back to accounts 14:40:09
24 that he controlled; isn't that right? 14:40:12

25 MR. MURPHY: Objection as to form. 14:40:15

1 A As stated previously, we have not seen --
2 being Beazley -- documentation of financial
3 benefit to Jagannath, to Jag.

4 Q But if that is true, that's not an
5 arms-length contract if he's dealing with his
6 brother's company; isn't that right?

7 MR. MURPHY: Objection as to form.

8 Q To his superiors, failing to list that on
9 conflict of interest statements year after year?
10 That's not an arms-length contract, is it?

11 MR. MURPHY: Same objection.

12 A Can you repeat your question, please?

13 Q Yeah. You said in Beazley's response on
14 Page 14 that Jagannath did not conceal the fact
15 that he was negotiating arms-length contracts with
16 DGS and Mid-South similar to other diverse or
17 minority-owned businesses.

18 How can you say that when DGS and
19 Mid-South were owned and controlled by his
20 brother, and he never revealed that to anybody
21 else at IP, that he was dealing with a company
22 owned and controlled by his brother?

23 MR. MURPHY: Asked and answered.

24 A Well, I mean, as I stated previously, from
25 the information that Beazley's seen in the

1 presentation, Jag did not conceal that he was
2 negotiating the contracts with DGS or Mid-South.

3 Q Right. He said to everybody he's dealing
4 with DGS and Mid-South, but he never told anybody
5 that those were companies that were owned and
6 controlled by his brother; isn't that by
7 definition not an arm-length transaction when he's
8 engaged in a business transaction on behalf of the
9 company with one of his family members and doesn't
10 tell anybody about it? That's not an arms-length
11 transaction, is it?

12 MR. MURPHY: Objection as to form.

13 A Well, again, he didn't -- he disclosed
14 that he was negotiating the contracts.

15 Q But he pretended as if they were separate
16 independent entities that he had no relationship
17 with, but in fact both of these companies were
18 controlled by his brother. That's not an
19 arms-length contract negotiation, is it?

20 MR. MURPHY: Same objection.

21 A As stated previously, he did make others
22 aware of the negotiations with International
23 Paper.

24 Q But you don't have any evidence that he
25 told anybody at International Paper that he was

14:41:51
14:41:58
14:42:02
14:42:06
14:42:09
14:42:11
14:42:14
14:42:19
14:42:22
14:42:25
14:42:28
14:42:29
14:42:32
14:42:44
14:42:46
14:42:52
14:42:55
14:43:00
14:43:03
14:43:06
14:43:07
14:43:14
14:43:21
14:43:21
14:43:23

1 dealing with DGA, a company owned and controlled
2 by his brother, or that he was dealing with
3 Mid-South, a company owned and controlled by his
4 brother; isn't that right? You don't have any
5 evidence that he actually revealed that to
6 anybody, much less his superiors at International
7 Paper?

8 MR. MURPHY: Objection; overbroad,
9 compound. You can answer.

10 A Again, as stated previously, he -- Jag did
11 make others within IP aware of negotiations and
12 the contracts with DGS --

13 Q That's not my question. My question is do
14 you have any evidence that he told anybody at
15 IP -- Jag did -- including his superiors, that DGS
16 was a company owned by his brother or that
17 Mid-South was a company owned by his brother?
18 That's the specific question I'm asking, not
19 whether he revealed that he was dealing with a
20 company named DGS or a company named Mid-South.
21 But do you have any evidence that he revealed to
22 anybody at IP that he was dealing with companies
23 DGS and Mid-South that were owned and controlled
24 by his brother?

25 MR. MURPHY: Same objection.

14:43:27
14:43:30
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14:44:03
14:44:10
14:44:13
14:44:15
14:44:19
14:44:26
14:44:28
14:44:32
14:44:34
14:44:36
14:44:39
14:44:42
14:44:47
14:44:49
14:44:51

1	A I don't recall if there was specific -- a	14:44:52
2	specific document on that item.	14:44:58
3	Q At the bottom of Page 14 of this	14:45:00
4	Exhibit 7, the last paragraph starts IP did not	14:45:04
5	follow its competitive bidding guidelines when it	14:45:09
6	came to diverse or minority owned businesses.	14:45:12
7	Do you see that?	14:45:15
8	A Yes, I do.	14:45:16
9	Q And when you are talking about diversity	14:45:18
10	or minority-owned businesses, that includes DGS	14:45:26
11	and Mid-South, right?	14:45:29
12	A Yes.	14:45:32
13	Q So Beazley agrees that when Jag was doing	14:45:41
14	business with DGS and Mid-South, this was -- Jag	14:45:46
15	was not following competitive bidding guidelines	14:45:49
16	when it came to dealing with DGS and Mid-South; is	14:45:53
17	that correct?	14:45:57
18	A Well, Beazley understands that, more	14:45:57
19	broadly, as stated, when it came to diverse	14:46:08
20	minority-owned businesses, the same competitive	14:46:12
21	bidding guidelines were not followed.	14:46:16
22	Q And that includes with DGS and Mid-South,	14:46:18
23	right?	14:46:22
24	A Yes, and others, but not exclusively them.	14:46:23
25	Q There are no other minority or diverse	14:46:28

1 suppliers that IP was doing business with that 14:46:32
2 were owned or controlled by Jag's brother; is that 14:46:37
3 right? 14:46:40

4 A Not that we're aware of. 14:46:40

5 Q In the middle paragraph on Page 15, it 14:46:42
6 says IP's local sourcing department routinely 14:46:55
7 failed to properly document the transactions into 14:46:59
8 which it entered. 14:47:01

9 Do you see that statement? 14:47:02

10 A Yes -- 14:47:04

11 Q Middle of -- 14:47:05

12 A -- I do. Yes, I do. 14:47:06

13 Q And that applies to Jag's transactions 14:47:08
14 with DGS and Mid-South, correct? 14:47:11

15 A Yes, that's correct. 14:47:13

16 Q So there were a number of payments and 14:47:35
17 purchases from IP to DGS and Mid-South that were 14:47:40
18 not properly documented according to IP business 14:47:44
19 guidelines; isn't that right? 14:47:48

20 A I would, again, refer back to the document 14:47:50
21 with respect to the first sentence on Page 15, the 14:48:16
22 middle paragraph. 14:48:21

23 Q Which document are you referring to? 14:48:22

24 A The one we're looking at, Exhibit 7. 14:48:23

25 Q Right. Yeah, there's a statement that 14:48:26

1 says IP's global sourcing department. That's the
2 department in which Jag worked, correct?

3 A Yes.

4 Q Routinely failed to properly document the
5 transactions into which it entered, and that
6 applies to Jag's failure to properly document some
7 of the transactions between IP and DGS and IP and
8 Mid-South; isn't that right?

9 MR. MURPHY: Objection as to form.

10 A I don't recall if it was exclusively to --
11 with respect to DGS and Mid-South amongst others.

12 Q Okay. Can you turn to the next page, the
13 top of Page 16 of this Exhibit 7? It says at the
14 top of Page 16, prior to the inception of the
15 policy, Plaintiff's employees periodically made
16 complaints about the services DGS and Mid-South
17 provided which were reported to the Plaintiff.
18 Notwithstanding these complaints, Plaintiff
19 continued to conduct business with DGS and
20 Mid-South for nearly a decade.

21 Do you see that?

22 A Yes, I do.

23 Q Okay. What complaints were you referring
24 to?

25 A My understanding is there were some

1 complaints over time from certain mill staff. 14:50:16

2 Q And other than complaining about the 14:50:21
3 prices that were being paid to DGS and Mid-South, 14:50:24
4 what complaints about the services they were 14:50:28
5 providing or not providing are you aware of? I 14:50:33
6 don't see any documents cited here in support of 14:50:36
7 the sentence. I want to know specifically what 14:50:39
8 complaints you're talking about. 14:50:41

9 A I don't recall the specifics as far as the 14:51:04
10 complaints with respect to services. 14:51:06

11 Q Can you recall generally what complaints 14:51:08
12 you're talking about here in this answer to the 14:51:14
13 interrogatory at the top of Page 16 of Exhibit 7? 14:51:16

14 A Again, I don't recall the specifics on 14:51:18
15 that. 14:51:28

16 Q And you say that complaints were made to 14:51:28
17 Plaintiff. Who other than Jag were these 14:51:36
18 complaints made to about services DGS or Mid-South 14:51:38
19 were providing? 14:51:43

20 A I don't recall who else outside of Jag 14:51:44
21 would have received those complaints. 14:51:59

22 Q And if Jag received those complaints and 14:52:02
23 he is co-conspiring with DGS and Mid-South, you 14:52:05
24 would expect him to try to deflect those 14:52:12
25 complaints rather than disclose them or elevate 14:52:14

1	them to anybody else at IP, wouldn't you? Isn't	14:52:16
2	that what an employee thief would do in	14:52:22
3	furtherance of his theft scheme?	14:52:25
4	MR. MURPHY: Objection to form; calls for	14:52:27
5	speculation.	14:52:29
6	A I'm not able to speculate on his mindset.	14:52:38
7	Q Well, do you know of any complaints made	14:52:40
8	to Jag about DGS or Mid-South where instead of	14:52:43
9	deflecting them or suppressing them he actually	14:52:51
10	relayed them to any superior of his so that they	14:52:53
11	would find out about them?	14:52:57
12	A Again, I don't recall who received	14:52:59
13	information regarding any complaints with regard	14:53:08
14	to DGS and Mid-South.	14:53:13
15	Q You say that these complaints were known	14:53:17
16	prior to the inception of the policy. Why is that	14:53:24
17	significant from a coverage standpoint if somebody	14:53:26
18	was complaining about DGS's services prior to the	14:53:30
19	inception of the policy?	14:53:33
20	A It could suggest earlier knowledge.	14:53:35
21	Q Earlier knowledge of what?	14:53:59
22	A Or earlier discovery.	14:54:01
23	Q Earlier discovery of what?	14:54:06
24	A Of any of the activities involving DGS and	14:54:08
25	Mid-South.	14:54:16

1 Q Well, how does the fact that somebody
2 complained about DGS's services or Mid-South's
3 services prior to the inception of the policy, how
4 does that evidence that somebody knew that Jag was
5 stealing from the company by entering into
6 contracts with his brother's company and having
7 money funneled back to himself? How does that
8 relate to any prior knowledge or discovery of
9 employee theft, the fact that somebody's
10 complaining about DGS's services?

14:54:17
14:54:20
14:54:23
14:54:28
14:54:33
14:54:36
14:54:38
14:54:43
14:54:48
14:54:51

11 A Well, again, I didn't say that it did. I
12 said that it could potentially indicate that.

14:54:57
14:55:01

13 Q Well, is -- is Beazley suggesting or
14 arguing that somehow International Paper knew
15 about or discovered the employee theft scheme
16 prior to the inception of the Beazley policy on
17 July 1, 2019?

14:55:05
14:55:09
14:55:15
14:55:19
14:55:21

18 MR. MURPHY: Just note my objection to the
19 extent that she's testifying about the discovery
20 related to affirmative defenses.

14:55:33
14:55:35
14:55:39

21 Q You may answer.

14:55:47

22 A Can you repeat your question, please?

14:55:53

23 Q Does Beazley have any evidence to support
24 the contention that International Paper knew or
25 discovered the employee theft scheme prior to the

14:55:55
14:55:58
14:56:01

1	inception of the Beazley policy on July 1, 2019?	14:56:04
2	MR. MURPHY: Same objection. You can	14:56:08
3	answer.	14:56:09
4	A Not at this time.	14:56:09
5	Q The next paragraph on Page 16 says IP was	14:56:18
6	aware of the scope of work performed by DGS and	14:56:22
7	Mid-South prior to inception of a policy. IP knew	14:56:28
8	that there was a substantial markup associated	14:56:31
9	with the DGS and Mid-South work and characterized	14:56:36
10	Mid-South as a middleman. See, for example, the	14:56:40
11	February 11th, 2019, Brown email to Jag.	14:56:42
12	Do you see that?	14:56:45
13	A Yes, I do.	14:56:46
14	Q And I'll ask our tech put Exhibit 14 into	14:56:49
15	the chat, and while he's doing that, let me ask	14:56:56
16	you: What's the significance of whether prior to	14:56:59
17	the policy inception date of July 1, 2019, that if	14:57:03
18	somebody knew that DGS and Mid-South was making a	14:57:10
19	substantial markup, why is that relevant from an	14:57:13
20	insurance coverage standpoint under the Beazley	14:57:18
21	policy?	14:57:21
22	A As stated previously, could indicate	14:57:21
23	potential earlier knowledge.	14:57:32
24	Q Earlier knowledge of what?	14:57:35
25	A Of the activities that are at issue.	14:57:51

1 Q Well, let's look at the one document that 14:57:54
2 you cite, which is Exhibit 14. Do you have that 14:57:58
3 open? 14:58:01

4 A Yeah. Just -- yes, I have it open. It's 14:58:05
5 a two-page document? 14:58:13

6 Q Yes. This is an email exchange between 14:58:15
7 Matthew Brown, the mill controller at the 14:58:21
8 Maysville mill, and Jag. And if you go backwards 14:58:27
9 to forwards, Matthew Brown sends an email on 14:58:31
10 Monday, February 11th, at 2:59 p.m., and it says 14:58:35
11 to Jag, Jag -- and this goes from page 1925 to 14:58:40
12 1926 -- I'm doing some research on cost reduction 14:58:48
13 opportunities for Maysville as part of our 14:58:52
14 \$450 million cost reduction initiative and had a 14:58:55
15 few questions about our ASA purchases. I 14:59:00
16 understand that we purchase our ASA through DGS, 14:59:03
17 who is basically a middleman for the chemical 14:59:06
18 between us and Nalco. I also understand that the 14:59:09
19 markup DGS receives for ASA is fairly significant. 14:59:11
20 Is there a particular reason that we purchase our 14:59:16
21 ASA through DGS rather than directly for Nalco? 14:59:18
22 Is there anything preventing us from purchasing 14:59:22
23 directly through Nalco to eliminate the markup? 14:59:26

24 Do you see that? 14:59:29

25 A Yes, I do. 14:59:30

1	Q Okay. And Jag responds at 4:14 p.m.,	14:59:31
2	Matt, let me review the price points and revert	14:59:36
3	back to you. Global Sourcing has been tasked with	14:59:39
4	increasing the diversity spend and giving the	14:59:43
5	primary incumbent (in this case, Nalco) an	14:59:46
6	additional year in contract. Do we plan to keep	14:59:50
7	the Nalco product for the near foreseeable future?	14:59:53
8	Thanks.	14:59:56
9	And then in response, Matthew Brown	14:59:56
10	responds, Jag, I completely understand and support	15:00:03
11	the task to increase diversity spend; however,	15:00:06
12	unless there is a distinct benefit that DGS is	15:00:10
13	providing, we are interested in obtaining the best	15:00:14
14	possible price for this product. If there is a	15:00:17
15	benefit that justifies the added expense, please	15:00:19
16	help us understand what it is so we can discuss	15:00:22
17	locally. At this point, I do not see us making a	15:00:25
18	wholesale change away from Nalco as long as they	15:00:28
19	are price competitive; however, I cannot commit	15:00:31
20	that they'll be the supplier over the long term.	15:00:34
21	Do you see that?	15:00:37
22	A Yes, I do.	15:00:38
23	Q Okay. So how does this email exchange	15:00:40
24	demonstrate that Mr. Brown might know that Jag is	15:00:49
25	stealing from the company by doing business	15:00:53

1 unbeknownst to anybody with his brother's company,
2 DGS and Mid-South, and having money funneled back
3 from those contracts to Jag?

15:00:56

15:01:00

15:01:03

4 MR. MURPHY: Objection as to form.

15:01:10

5 A We have not stated what you just stated
6 with respect to this email.

15:01:11

15:01:32

7 Q Well, again, do you have any evidence to
8 support the notion that anybody at IP other than
9 Jag knew about the employee theft scheme that's
10 the subject of this coverage claim prior to the
11 inception of the Beazley policy on July 1, 2019?

15:01:33

15:01:39

15:01:44

15:01:49

15:01:52

12 A I would just defer to our interrogatory
13 response on that.

15:02:12

15:02:23

14 Q Go back to the settlement for \$15 million
15 that we talked about earlier today. That was
16 Exhibit 17 --

15:02:24

15:02:37

15:02:41

17 A Yes.

15:02:46

18 Q -- where in exchange for \$15 million, IP
19 gave a release to Jag and Shiv and DGS and
20 Mid-South? Do you recall that?

15:02:46

15:02:51

15:02:56

21 A Yes, I do.

15:02:56

22 Q And we looked at an email exchange where
23 your joint counsel, Mr. Keeley, for Zurich and
24 Beazley stated his, I guess, position on behalf of
25 Beazley and Zurich to IP as to whether or not

15:02:57

15:02:58

15:03:02

15:03:09

1	there was an objection to him going ahead with the	15:03:12
2	settlement. Do you recall that discussion?	15:03:15
3	A From today? Yes, I do.	15:03:17
4	Q And did you or anybody at Beazley have any	15:03:19
5	discussions with anybody at Zurich about the	15:03:26
6	propriety of that settlement aside from counsel?	15:03:30
7	MR. MURPHY: Objection as to form. I	15:03:39
8	believe that was asked and answered during the	15:03:40
9	last session.	15:03:42
10	A As previously stated, no.	15:03:49
11	Q Can you take a look at Exhibit 16?	15:03:51
12	MR. SYLVESTER: I'll ask that that be put	15:03:57
13	into the chat.	15:03:58
14	(Exhibit 16 was marked for identification	15:03:59
15	and is attached to the transcript.)	15:04:21
16	Q When you see it in the chat, can you open	15:04:21
17	it?	15:04:23
18	A Yeah. It just came up.	15:04:24
19	MR. MURPHY: I'm downloading it.	15:04:25
20	Q Tell me when you have it open.	15:04:41
21	A Okay. I have it open.	15:04:43
22	Q For the record, this is a document	15:04:52
23	produced by Zurich, Zurich No. 002434 regarding	15:04:56
24	the proposed settlement. It's an email from Donna	15:05:00
25	Malcolm to Tracey Haley copied to Terri	15:05:04

1	Schoenhaar.	15:05:11
2	Did you have any dealings with anybody at	15:05:13
3	Zurich by the name of Donna Malcom, Tracy Haley,	15:05:15
4	or Terri Schoenhaar with regard to this	15:05:17
5	International Paper claim?	15:05:18
6	A Well, Donna Malcolm was the claim handler	15:05:22
7	for Zurich.	15:05:30
8	Q I'm sorry. Say that again. I interrupted	15:05:30
9	you.	15:05:32
10	A Donna -- Donna Malcolm was the claim	15:05:33
11	handler at Zurich.	15:05:39
12	Q Okay. And how were you aware of that?	15:05:41
13	A Through emails with counsel.	15:05:43
14	Q Okay. And so here's Donna Malcolm's email	15:05:44
15	to others at Zurich, specifically Tracey Haley,	15:05:52
16	and the subject is the restitution/plea deal for	15:05:59
17	International Paper.	15:06:07
18	And she says, hi Tracey. Wherever you	15:06:07
19	are, I hope you're enjoying yourself. We have	15:06:10
20	been asked whether we would agree to a	15:06:13
21	restitution/sentencing deal worked out between the	15:06:15
22	U.S. Attorney's Office and the former employee of	15:06:18
23	IP and his half-brother which would essentially	15:06:21
24	necessitate that we waive subrogation.	15:06:24
25	Just a refresher, IP has claimed losses of	15:06:27

1 32 million plus resulting from an alleged scheme 15:06:30
2 perpetrated by the principal and his half-brother 15:06:34
3 regarding the provision (or not) of diversity 15:06:37
4 supplier services. Beazley is primary with a 15 15:06:41
5 million policy limit and a \$1 million deductible; 15:06:44
6 our policy limit is 15 million. 15:06:49

7 The proposal is that the principal and his 15:06:50
8 half-brother would pay between 15 and \$16 million 15:06:53
9 in restitution and the U.S. attorney would 15:06:57
10 recommend probation for the latter and two years 15:06:59
11 or less in prison for the principal. A condition 15:07:03
12 of the agreement would be the dismissal with 15:07:06
13 prejudice of the civil suit IP filed against these 15:07:10
14 individuals and the companies they own. We have 15:07:13
15 pressed for more details about how the restitution 15:07:15
16 to be paid would be funded (part cash and 15:07:18
17 liquidation of property) but have been given no 15:07:22
18 insight into the extent of the Defendants' assets. 15:07:26
19 The U.S. attorney insists that this is the best 15:07:29
20 deal to be gotten based upon what is known about 15:07:32
21 their holdings in the U.S. (actually the figure 15:07:35
22 being floated is substantially more than what 15:07:37
23 Kroll found when it researched the principal's 15:07:40
24 holdings). 15:07:43

25 We have been deluged with documents 15:07:45

1 provided by the insured and an EUO is continuing
2 but have yet to reach any conclusions regarding
3 coverage. A couple of questions. Does recovery
4 need to weigh in on this question? Do you have
5 any thoughts on whether we should agree? We are
6 sharing counsel with Beazley. Here's Mike
7 Keeley's recommendations for Zurich.

15:07:49

15:07:52

15:07:55

15:07:58

15:08:00

15:08:03

15:08:05

8 And then it's redacted.

15:08:05

9 And at the end, it says if you want to
10 know my thoughts, I think we should agree. Not
11 only does the proposed restitution possibly
12 extinguish any exposure we may have regarding this
13 claim, even if the Defendants have other assets
14 hidden overseas, I think it is magical thinking to
15 assume that we will be able to locate and actually
16 recover them. Donna.

15:08:08

15:08:09

15:08:12

15:08:14

15:08:18

15:08:21

15:08:25

15:08:28

17 Do you see that language?

15:08:30

18 A Yes, I do.

15:08:31

19 Q Do you recall any communications where
20 Zurich indicated based on its analysis of the
21 proposed settlement that the settlement was a good
22 deal and it would be magical thinking to think
23 that they could get any more from the assets of
24 the Defendants, Jag and Shiv, if they didn't agree
25 to the deal?

15:08:32

15:08:39

15:08:42

15:08:48

15:08:50

15:08:56

15:08:59

1	A No, I don't recall any discussions with	15:09:00
2	Zurich.	15:09:08
3	Q So you never spoke to Donna Malcolm at all	15:09:09
4	about this proposed arrangement or settlement with	15:09:14
5	Jag and Shiv and their entities?	15:09:18
6	A There were joint calls with counsel.	15:09:20
7	Q So you did have calls that included Donna	15:09:27
8	Malcolm, but counsel was on those calls?	15:09:34
9	A Correct.	15:09:38
10	Q Is that right?	15:09:38
11	A I don't recall if there was any discussion	15:09:40
12	regarding --	15:09:45
13	MR. MURPHY: Excuse me. The witness is	15:09:46
14	instructed not to disclose any attorney-client	15:09:48
15	confidential communications.	15:09:50
16	Q Yeah. My question's just a yes or no.	15:09:53
17	You don't have to tell me the substance, but did	15:09:57
18	you participate in calls with Donna Malcolm or	15:09:59
19	other claims people at Zurich where counsel was	15:10:02
20	present and you discussed the International Paper	15:10:05
21	claim?	15:10:10
22	MR. MURPHY: Objection to the form; asked	15:10:10
23	and answered. Although I guess I did interrupt	15:10:12
24	the answer, but she started out with yes.	15:10:18
25	A The answer remains yes.	15:10:25

1 Q And how much such calls did you have with 15:10:28
2 representatives of Zurich, albeit with counsel 15:10:35
3 present? 15:10:38

4 A I don't recall a number. 15:10:38

5 Q Well, did you have multiple calls with 15:10:42
6 counsel present and representatives of Zurich in 15:10:46
7 attendance on those calls? 15:10:52

8 A Again, I don't recall a particular number. 15:10:53

9 Q Did you have any calls relating 15:11:04
10 specifically to the proposed settlement with Jag 15:11:09
11 and Shiv with Zurich representatives in attendance 15:11:12
12 and also with counsel in attendance? 15:11:19

13 MR. MURPHY: The witness is instructed not 15:11:21
14 to answer to the extent it would disclose any 15:11:23
15 attorney-client communications, and it seems to be 15:11:26
16 infringing upon the attorney-client privilege. 15:11:32

17 THE WITNESS: I don't recall with respect 15:11:42
18 to that question. 15:11:43

19 BY MR. SYLVESTER: 15:11:44

20 Q Could any such calls be reflected in your 15:11:44
21 claims notes? We can go back and look at them, 15:11:47
22 Exhibit 18. 15:12:00

23 MR. SYLVESTER: I'll ask if Harold would 15:12:01
24 put Exhibit 18 into the chat box. 15:12:04

25 (Exhibit 18 was previously marked for 15:12:21

1	identification and is attached to the transcript.)	15:12:33
2	BY MR. SYLVESTER:	15:12:33
3	Q Tell me when you have Exhibit 18 open.	15:12:33
4	A I have it open.	15:12:36
5	Q Okay. And so these settlement discussions	15:13:02
6	were taking place in the summer of 2022 based on	15:13:04
7	other documents. Can you turn to your note, claim	15:13:07
8	note June 13th, 2022, of this exhibit? It's on	15:13:13
9	page ending in 00290 of the document.	15:13:25
10	A Okay.	15:13:29
11	Q Do you have that?	15:13:29
12	A Yes.	15:13:32
13	Q And I believe it's page numbered five of	15:13:33
14	the printed out claims notes.	15:13:37
15	So your note for June 13th says -- and	15:13:44
16	this is at 5:10 p.m. -- well, let me back up.	15:13:46
17	There's one at 4:23 p.m. You have two	15:13:49
18	notes that day. At the bottom of Page 5, it says	15:13:58
19	there have been several communications with the	15:14:02
20	insured and insured's counsel regarding the	15:14:04
21	settlements reported proposed by the alleged bad	15:14:06
22	actor employee and his brother.	15:14:10
23	The insured wanted the carrier's consent	15:14:11
24	to propose settlements as they would have included	15:14:13
25	both the criminal case and the civil action, which	15:14:17

1 is relevant to the insurance claim. The insured
2 did not have any information on the source of the
3 funds; i.e., cash or liquidation of real estate or
4 other assets.

5 The insured wanted to confirm that if it
6 settled, they/it could still pursue the balance of
7 any alleged losses under the crime coverage.

8 Beazley advised it could not agree that the
9 settlement was reasonable. It would have waived
10 Beazley's potential subrogation rights and
11 precluded Beazley from pursuing recovery for any
12 potential claim payment.

13 We requested to have a financial affidavit
14 of Shiv and his brother, and the insured was not
15 able to provide it. The insured only reported
16 that the assistant U.S. attorney reported that the
17 proposal would be the best deal he could get.

18 Do you see that language?

19 A Yes, I do.

20 Q And was that your understanding at the
21 time of the request for consent that the assistant
22 U.S. attorney was reporting that the \$15 million
23 amount was the best deal that could be had in
24 settlement with the claim?

25 A That's what was reported at the time.

Q The note goes on to say the insured's outside counsel had engaged Kroll and the report of certain findings was only provided in April of 2022. The report date was July 2021. The report noted about 27 real estate assets of approximately six and a half million owned by Shiv and his brother as of 2021. There was also concern on behalf of the insured that there may be other entities transferred or purchased under the names of other family members. Consent of information had been sent January 25th, June 14th, July 20th, and November 15th. To date, there's been no settlement between the insured. The insured advised in May they'll participate in a mediation with the former employee and his brother. The next date for the examination under oath is being finalized for mid July.

You mentioned the Kroll report of assets that was provided by International Paper to Beazley. Did Beazley do any of its own investigation or hire its own investigator to look into assets available owned by Shiv or Jag to satisfy a recoupment action?

A Beazley did investigate potential assets.

Q What investigation did Beazley perform

15:15:41
15:15:45
15:15:49
15:15:51
15:15:55
15:15:59
15:16:01
15:16:07
15:16:09
15:16:13
15:16:15
15:16:19
15:16:22
15:16:25
15:16:29
15:16:31
15:16:33
15:16:35
15:16:42
15:16:45
15:16:47
15:16:52
15:16:59
15:17:01
15:17:14

1 other than looking at the Kroll report that was 15:17:16
2 provided by IP? 15:17:19

3 MR. MURPHY: Again, the witness is 15:17:25
4 cautioned without disclosing any attorney-client 15:17:32
5 communications. 15:17:34

6 A Beazley performed similar asset checks. 15:17:41

7 Q Did Beazley hire an outside entity to do 15:17:45
8 that asset check? 15:17:49

9 A Yes. 15:17:50

10 Q And what outside entity was that? 15:17:53

11 A StoneTurn. 15:18:03

12 Q Is that the same entity that is an expert 15:18:05
13 witness now in this case for Beazley? 15:18:10

14 A Yes. 15:18:13

15 Q Did Beazley ever provide to IP the results 15:18:20
16 of that asset check that it did with StoneTurn? 15:18:28

17 A No. 15:18:32

18 Q Why not? 15:18:34

19 MR. MURPHY: Objection to the extent it 15:18:43
20 calls for a legal conclusion. Again, don't 15:18:44
21 disclose any attorney-client communications. 15:18:46

22 A It's part of the claim investigation. 15:18:49

23 Q Well, you're complaining in your claims 15:19:07
24 note that it took a while for International Paper 15:19:10
25 to provide Beazley with the Kroll report from 15:19:12

1 July 2021 to April 2022, but IP did provide it to 15:19:18
2 Beazley. 15:19:23

3 Why was Beazley not willing to provide its 15:19:24
4 own investigation report to International Paper? 15:19:26
5 Wouldn't that have been helpful for International 15:19:29
6 Paper to evaluate the reasonableness of the 15:19:32
7 settlement? 15:19:35

8 MR. MURPHY: Objection to the form and the 15:19:36
9 characterization of the Beazley investigation. 15:19:37

10 A Again, it was part of our claim 15:19:51
11 investigation. 15:19:52

12 Q Can StoneTurn provide a written report to 15:19:53
13 Beazley regarding the asset investigation of Jag 15:19:58
14 and Shiv and their entities? 15:20:03

15 A Yes. 15:20:05

16 Q And when was that report provided to 15:20:13
17 Beazley by StoneTurn? 15:20:21

18 A I don't -- I don't recall the exact date. 15:20:23

19 Q Well, how long ago do you recall getting 15:20:25
20 it? 15:20:32

21 A It was in 2023. 15:20:33

22 Q Are you willing to provide that asset 15:20:41
23 investigation report to International Paper now 15:20:43
24 that we know it exists? 15:20:47

25 MR. MURPHY: The witness is instructed not 15:20:51

1 to answer without consulting with counsel. 15:20:52

2 Q What did the report tell you about assets 15:21:07
3 available or owned by Jag or Shiv or DGS or 15:21:11
4 Mid-South or related companies? 15:21:16

5 A The findings were similar and in line with 15:21:18
6 the Kroll report. 15:21:29

7 Q Well, if that's the case, is there a 15:21:30
8 reason not to provide it to International Paper? 15:21:43

9 MR. MURPHY: Objection to the extent it 15:21:50
10 calls for a legal conclusion. The witness should 15:21:51
11 not speculate. 15:21:54

12 A I'm unable to comment on that question. 15:22:05

13 Q So the StoneTurn report, what entities or 15:22:07
14 persons did it investigate in terms of assets? 15:22:14

15 A As stated previously, it's in line with 15:22:18
16 the Kroll report. 15:22:25

17 Q Did it investigate all the same entities 15:22:26
18 as well as Jag and Shiv personally? 15:22:33

19 A It was in line with the Kroll report. 15:22:37

20 Q Did you give StoneTurn the Kroll report as 15:22:40
21 part of their base of information to investigate? 15:22:44

22 A I don't recall if they were provided a 15:22:50
23 copy. 15:22:59

24 Q If they were, it would be in their files 15:22:59
25 presumably, right? 15:23:04

1	A	Maybe. I can't really speculate, but --	15:23:06
2	Q	Well, what did you ask them to do? What	15:23:19
3		was -- what was their task? When you sent them	15:23:22
4		out to investigate?	15:23:26
5	A	Potential assets of the third parties	15:23:27
6		identified in the claim.	15:23:39
7	Q	And which parties specifically were they	15:23:41
8		investigating?	15:23:47
9	A	Jag, Shiv, DGS, Mid-South. I don't recall	15:23:51
10		if there were any others.	15:24:01
11	Q	When you got their report, did you make a	15:24:04
12		note of it in your claims notes?	15:24:06
13	A	I don't recall if there was a note entry	15:24:08
14		at that time.	15:24:21
15	Q	You say it was sometime in 2023 last year	15:24:21
16		that you got this report?	15:24:26
17	A	Yes.	15:24:27
18	Q	By that time, the settlement had already	15:24:32
19		been entered into, right?	15:24:35
20	A	The settlement was previously executed,	15:24:36
21		yes.	15:24:45
22	Q	Why didn't you do this investigation of	15:24:46
23		assets before the settlement was entered into so	15:24:48
24		that you could provide the benefit of that to	15:24:52
25		International Paper before it had to decide	15:24:56

1	whether to enter into the settlement?	15:24:58
2	A Well, as previously stated, the results	15:25:00
3	were not dissimilar.	15:25:18
4	Q I understand that, but at that point, the	15:25:19
5	ship had already sailed. The settlement was	15:25:21
6	already entered into.	15:25:24
7	If you were going to do your own	15:25:26
8	independent assets search, why didn't you do it at	15:25:27
9	a time before the settlement and share the results	15:25:31
10	with IP so that it would have the benefit of that	15:25:33
11	knowledge in terming whether to enter into the	15:25:35
12	settlement or not? Why did you wait until after	15:25:37
13	the settlement was already done to do that	15:25:40
14	investigation?	15:25:41
15	A The investigation has been ongoing.	15:25:42
16	Q When did the investigation start?	15:25:51
17	A When the claim was noticed.	15:25:54
18	Q No, I'm talking about when did StoneTurn's	15:26:14
19	asset investigation commence?	15:26:17
20	MR. MURPHY: Objection as to form; asked	15:26:19
21	and answered.	15:26:21
22	A I don't recall the date that they began	15:26:24
23	their investigation with regard to StoneTurn.	15:26:26
24	Q Yeah. Did StoneTurn's investigation begin	15:26:28
25	before or after the settlement was reached with	15:26:31

1	Jag and Shiv?	15:26:34
2	A Well, they said it was in 2023.	15:26:34
3	Q That's when you said you got the report.	15:26:43
4	Is that when they started work, in 2023, on this	15:26:46
5	investigative report?	15:26:49
6	A Yes.	15:26:50
7	Q And so that leads to my question: Why did	15:26:54
8	you wait until after the settlement was entered	15:27:04
9	into to hire somebody to do an asset investigation	15:27:06
10	rather than doing it before the settlement or	15:27:11
11	while the settlement was being considered so that	15:27:14
12	IP could have the benefit of that work in	15:27:17
13	considering whether to enter into the settlement?	15:27:21
14	MR. MURPHY: Objection as to form; asked	15:27:24
15	and answered.	15:27:26
16	A Well, at the time of the settlement, IP	15:27:26
17	had performed its own investigation and also had	15:27:41
18	knowledge of the source of the settlement funds.	15:27:44
19	Q Go back to your claims notes, if you	15:27:46
20	would.	15:27:59
21	A Okay. I have them open.	15:28:13
22	Q So can you look at the claims note for	15:28:16
23	August 17th, 2022, on Page 3 of the claims notes?	15:28:24
24	That's the page numbered ending in 288.	15:28:31
25	A Excuse me.	15:28:37

1	288. Okay. I have it open.	15:28:52
2	Q Okay. So this is the indication -- well,	15:28:55
3	August 17th at 3:48 p.m. It says the claim	15:28:59
4	investigation is continuing at this time. The	15:29:04
5	insured has sent additional information in April	15:29:07
6	and May 2022 making reference to items contained	15:29:10
7	in about 160,000 of documents. The second day of	15:29:13
8	the examination under oath of the insured's	15:29:19
9	employee is being finalized for July 2022. The	15:29:21
10	insured has not received any settlements from the	15:29:25
11	alleged bad actor or his brother. The insured	15:29:28
12	reported at the end of May that they may proceed	15:29:31
13	with a mediation with the former employee and his	15:29:33
14	brother. Outcome is pending from the insured.	15:29:37
15	The second EUO is set for August 31st. There are	15:29:40
16	outstanding questions with respect to coverage and	15:29:45
17	quantum on this matter. The insured continues to	15:29:48
18	assert its loss is 29 to 32 million.	15:29:50
19	Do you see that?	15:29:56
20	A Yes, I do.	15:29:57
21	Q So you knew at that time that a	15:29:58
22	mediation -- it's a settlement mediation between	15:30:01
23	IP and Jag and Shiv is scheduled to take place	15:30:05
24	sometime in the near future as of August 17th,	15:30:13
25	2022, correct?	15:30:18

1	A Yes.	15:30:18
2	Q Did Beazley express any interest to	15:30:25
3	participate in that mediation?	15:30:29
4	A Beazley didn't have any standing because	15:30:31
5	we had not issued any claim payments at that time.	15:30:38
6	Q Okay. So you then enter a claim note on	15:30:41
7	October, October 25th of 2022, on Page 2. This is	15:30:49
8	the most recent note that you've disclosed in	15:30:54
9	discovery.	15:30:57
10	And it says October -- do you have this	15:30:58
11	Page 2 of the document?	15:31:00
12	A Yes, I do.	15:31:01
13	Q It says the insured has reported that it	15:31:05
14	is in the process of entering into a settlement	15:31:08
15	agreement with the former employee, his brother,	15:31:10
16	and several of their associated business entities	15:31:12
17	for the amount of \$15 million. This is the amount	15:31:15
18	the U.S. attorney has advised is part of the	15:31:17
19	frozen cash that would be turned over to the	15:31:20
20	insured. The insured has also requested consent	15:31:22
21	to settle with the former employee and his broker	15:31:25
22	with a full release of the civil action and	15:31:27
23	dismissal of the criminal case. We have not	15:31:30
24	agreed to the same as current information	15:31:34
25	indicates the settlement is not reasonable, as the	15:31:36

1 former employee, his brother, and several of their
2 associated business entities hold significant real
3 estate assets, at least 7/8 million per the
4 insured, that could be sold to mitigate any
5 claimed loss and further reduce any claim. With a
6 full release, if coverage was confirmed, which it
7 has not, Beazley would be unable to take any
8 recovery actions against either party or the
9 associated businesses.

10 So if the -- if the Kroll report showed
11 that there was 7 to \$8 million worth of real
12 estate assets and they're agreeing to pay
13 \$15 million, why does that mean that the
14 settlement is unreasonable since they're paying
15 twice as much as what those real estate assets are
16 valued at?

17 A Well, as stated previously, the real
18 estate holdings and any other potential assets
19 were not the source of the funding of the
20 settlement, and the insured entered into a
21 release, which a -- a full release, which
22 precluded pursuing any additional recoveries
23 against known or unknown assets.

24 Q So do you believe that International Paper
25 should have refused to enter into a settlement

15:31:38
15:31:42
15:31:46
15:31:50
15:31:52
15:31:55
15:31:59
15:32:01
15:32:04
15:32:05
15:32:09
15:32:12
15:32:14
15:32:17
15:32:19
15:32:23
15:32:24
15:32:37
15:32:40
15:32:42
15:32:51
15:32:54
15:32:59
15:33:03
15:33:09

1 unless Jag and Shiv liquidated the 7 to \$8 million 15:33:13
2 worth of residential housing properties that they 15:33:19
3 owned that were referred to in the Kroll report? 15:33:22

4 MR. MURPHY: Objection as to form. 15:33:28

5 A We're -- Beazley's referring to the 15:33:30
6 inability to pursue further assets because of the 15:33:40
7 settlement agreement and its release terms. 15:33:43

8 Q But you're saying it's unreasonable 15:33:48
9 because after the settlement, Jag and Shiv are 15:33:50
10 still going to have those 7 to \$8 million of 15:33:53
11 residential housing. Isn't that why you're saying 15:33:56
12 it's unreasonable? 15:33:58

13 A Well, because of the release, we can't 15:34:07
14 even potentially pursue \$1 from those individuals. 15:34:09

15 Q So are you saying that International 15:34:15
16 should have insisted that Jag and Shiv kick the 15:34:20
17 tenants out of those houses and sell those 15:34:22
18 properties for whatever they could get and give 15:34:24
19 all that money to International Paper, and if they 15:34:27
20 didn't do that, the settlement was unreasonable? 15:34:29
21 Is that Beazley's position? 15:34:32

22 A Beazley's unable to speak to the occupancy 15:34:36
23 status of those properties, but as stated 15:34:43
24 previously, because of the settlement terms, 15:34:48
25 there's an inability to pursue those individuals 15:34:51

1 for anything further because of the release that 15:34:55
2 was entered into. 15:34:57

3 Q Right. But I'm telling you, and if you 15:34:58
4 looked at the record, those are low-income housing 15:35:01
5 brackets. So are you saying that if Beazley were 15:35:05
6 in charge of the litigation, they would have 15:35:07
7 insisted that all of those tenants get kicked out 15:35:09
8 of their houses and that those properties be sold 15:35:12
9 as part of any settlement, and that absent that 15:35:15
10 action, the settlement's not reasonable? 15:35:19

11 MR. MURPHY: Objection to form; asked and 15:35:22
12 answered; compound. You're free to repeat your 15:35:25
13 answer. 15:35:29

14 A As I stated previously, we're not able to 15:35:29
15 speak to the occupancy of those properties, but 15:35:38
16 the insured's own asset check indicated the 15:35:48
17 various of those real estate holdings. 15:35:53

18 Q And did you understand that those were 15:35:56
19 held in other names other than solely in Jag's 15:35:58
20 name or solely in Shiv's name such that selling 15:36:05
21 them, obtaining a judgment and a lien was going to 15:36:09
22 be practically impossible even if they continued 15:36:11
23 litigation against Jag and Shiv? 15:36:16

24 MR. MURPHY: Objection. 15:36:21

25 Q Were you aware of that fact? 15:36:22

1 MR. MURPHY: Objection as to form;
2 overbroad; presumes facts not in evidence. You
3 can answer.

4 A Beazley's unable to comment on the
5 mechanics of additional pursuit of those assets.

6 Q So you say in your internal claim note
7 that the settlement is not reasonable, but that's
8 not what you said to IP, right? What you said to
9 IP was that you wouldn't consent but you wouldn't
10 object, and you reserve your right to say that it
11 was unreasonable? But here in October of 2022,
12 you made the statement that the settlement is not
13 reasonable.

14 So why the discrepancy between what your
15 internal note says where you're saying
16 definitively the settlement's not reasonable in
17 your communication to your lawyer to IP where all
18 he said was that Beazley was reserving its right
19 to contend that settlement was unreasonable at a
20 later time based on further information?

21 MR. MURPHY: Objection as to form;
22 compound. There's six sentences in that
23 question/statement. You can answer if you
24 understood it.

25 A Can you repeat what your question is,

1 please?

15:37:56

2 Q Yeah. Had you made the decision on
3 October 25th of 2022 that the settlement entered
4 into any IP and Jag and Shiv was not reasonable as
5 stated in your internal claim note on Page 2 of
6 Exhibit 18?

15:37:56

15:37:58

15:38:01

15:38:05

15:38:09

7 A Well, the note does state that --
8 indicates that the settlement is not reasonable.

15:38:11

15:38:47

9 Q And is that Beazley's position right now,
10 that the settlement is not reasonable?

15:38:51

15:38:56

11 A Yes, as it precludes the pursuit of even
12 \$1 further from these individuals.

15:38:58

15:39:25

13 Q What is the amount of settlement that IP
14 could have entered into that Beazley would have
15 considered have been reasonable?

15:39:28

15:39:31

15:39:33

16 MR. MURPHY: Objection as to form.

15:39:37

17 A Beazley's unable to comment on that.

15:39:46

18 Q Well, you say it's unreasonable. What
19 would have been reasonable? If IP could have
20 gotten 16 million, would that have been reasonable
21 in Beazley's mind for a settlement of the claim
22 against Jag and Shiv?

15:39:48

15:39:50

15:39:52

15:39:57

15:40:03

23 MR. SYLVESTER: Objection as to form.

15:40:05

24 A Again, I can't -- on behalf of Beazley --
25 advise of a particular number with regards to

15:40:06

15:40:15

1 reasonableness on this matter.

15:40:19

2 Q Well, how much are you saying that IP
3 undersold the settlement for? A million? Two
4 million? Five million? How much more are you
5 saying IP should have gotten in order to have a
6 reasonable settlement?

15:40:21

15:40:25

15:40:28

15:40:30

15:40:33

7 MR. MURPHY: Objection as to form. Same
8 question, different words. She told you she can't
9 give you a number.

15:40:37

15:40:38

15:40:40

10 A As stated previously, I couldn't give an
11 exact number.

15:40:50

15:40:52

12 Q Can you give me a general number of how
13 much more you believe IP should have received in
14 settlement that Beazley would have considered it
15 reasonable?

15:40:53

15:40:55

15:41:00

15:41:02

16 MR. MURPHY: Same objection. Also
17 mischaracterizes previous testimony.

15:41:06

15:41:08

18 A I stated previously I'm not able to
19 provide a number.

15:41:10

15:41:12

20 Q You just know that 15 million is too low,
21 but you can't tell me what the reasonable number
22 is; is that correct?

15:41:16

15:41:19

15:41:21

23 MR. MURPHY: Objection as to form.

15:41:23

24 A Again, I'm not able to provide a number
25 with respect to reasonableness.

15:41:25

15:41:31

1 Q In these claims notes, the last claim note 15:41:34
2 that's provided, at least the most recent one, is 15:41:37
3 October 25th, 2022. We just read that into the 15:41:39
4 record. Did you stop making claims notes after 15:41:42
5 October 25th, 2022? 15:41:47

6 A No. 15:41:49

7 Q Have you been making claim notes in this 15:41:56
8 claim file from October of 2022 until the present? 15:42:01

9 A Yes. 15:42:04

10 Q How come none of them are disclosed; that 15:42:14
11 is, they're all redacted after that point and 15:42:21
12 basically blacked out? 15:42:23

13 MR. MURPHY: Objection. To the extent 15:42:25
14 that would require the witness to disclose any 15:42:28
15 attorney-client communications, strategy in this 15:42:33
16 case, work product, mental impressions, she's 15:42:38
17 cautioned not to respond. 15:42:41

18 MR. SYLVESTER: I'm sorry. Did you 15:42:44
19 instruct her not to respond, Gene, or did you 15:42:46
20 caution her in her response? 15:42:51

21 MR. MURPHY: I cautioned her. 15:42:52

22 MR. SYLVESTER: Okay. So she can respond? 15:42:53

23 MR. MURPHY: She can respond as long as it 15:42:55
24 doesn't disclose any attorney-client 15:42:58
25 communications. 15:43:01

1 THE WITNESS: Beazley is unable to respond 15:43:11
2 to that item. 15:43:13

3 BY MR. SYLVESTER: 15:43:14

4 Q We talked about the change in counsel from 15:43:15
5 Michael Keeley to the Robinson & Kole firm once 15:43:29
6 the litigation started in fall of 2022. Do you 15:43:33
7 recall that discussion? 15:43:36

8 A Yes, I do. 15:43:36

9 Q Michael Keeley had been your counsel on 15:43:39
10 this claim for several years, correct? 15:43:49

11 A He was our counsel prior to Robinson & 15:43:50
12 Kole. 15:43:54

13 Q And Michael Keeley was also counsel for 15:43:54
14 Beazley in the Sherwin Williams' employee theft 15:44:00
15 case, was he not? 15:44:05

16 A I don't -- I don't recall if he was. 15:44:10

17 Q Was that your case, the Sherwin Williams' 15:44:20
18 case, the employee theft claim? 15:44:23

19 A No, it was not. 15:44:25

20 Q You had nothing to do with that case, for 15:44:26
21 that claim, against Beazley for employee theft? 15:44:29

22 A I was not involved in the handling of that 15:44:32
23 claim. 15:44:34

24 Q Do you remember who was? 15:44:35

25 A I think Antonio Trotta. 15:44:36

1 Q And he was your predecessor on this case, 15:44:56
2 correct? 15:44:59

3 A Yes. 15:44:59

4 Q Okay. I just have a couple of final 15:45:03
5 questions about the policy, the Beazley policy, if 15:45:10
6 you would pull that out. 15:45:18

7 But before I do, with regard to these 15:45:19
8 claim notes, has Beazley set a reserve for this 15:45:21
9 claim; that is, International Paper's employee 15:45:30
10 theft claim? 15:45:36

11 MR. MURPHY: Let me object. I'm going to 15:45:41
12 presume that we've objected to the disclosure of 15:45:48
13 any preserved information in this case. So you're 15:45:51
14 catching me on the spot here. 15:45:58

15 MR. SYLVESTER: Well, my question is -- 15:46:03
16 first of all, it's just a yes or no question. Has 15:46:05
17 Beazley set a reserve for this? 15:46:08

18 MR. MURPHY: Yes, but that could be going 15:46:12
19 too far. Whether or not there's a reserve 15:46:14
20 shouldn't matter in terms of the coverage 15:46:17
21 analysis. 15:46:19

22 So I'm going to instruct the witness not 15:46:22
23 to answer that question. It goes beyond -- 15:46:25

24 MR. SYLVESTER: On what basis? 15:46:28

25 MR. MURPHY: -- as well. 15:46:31

1 MR. SYLVESTER: I'm sorry. On what basis
2 are you instructing the witness not to answer on?

3 MR. MURPHY: It's outside the scope of the
4 notice, and so she was not prepared to answer that
5 question.

6 MR. SYLVESTER: Right. But she's also
7 noticed in her individual capacity. And so I'll
8 ask her in her individual capacity.

9 BY MR. SYLVESTER:

10 Q Has Beazley set a reserve for this claim,
11 Ms. Ellis?

12 MR. MURPHY: Give me a moment, Ms. Ellis.

13 I'd prefer you pose your first question of
14 does she know whether they've set a reserve, which
15 probably -- no, I withdraw that.

16 All right. I'm not comfortable
17 instructing her not to answer, but I'm not going
18 to let this go much farther past the first
19 question. So she's free to answer in her personal
20 capacity if she knows whether or not Beazley's set
21 a reserve on this matter.

22 THE WITNESS: Yes.

23 BY MR. SYLVESTER:

24 Q And whose decision is it as to whether
25 though set a reserve and how much it's set as a

15:46:33

15:46:35

15:46:38

15:46:39

15:46:42

15:46:43

15:46:44

15:46:48

15:46:50

15:46:50

15:46:53

15:46:58

15:47:16

15:47:19

15:47:25

15:47:27

15:47:36

15:47:39

15:47:44

15:47:47

15:47:53

15:48:02

15:48:03

15:48:03

15:48:09

1	reserve to this claim?	15:48:15
2	MR. MURPHY: Again, this answer is not as	15:48:16
3	a corporate representative. These are in her own	15:48:18
4	person, individual capacity, correct?	15:48:23
5	Mr. Sylvester, you agree with that,	15:48:26
6	correct?	15:48:27
7	MR. SYLVESTER: Yes, absolutely.	15:48:28
8	MR. MURPHY: Okay.	15:48:29
9	BY MR. SYLVESTER:	15:48:33
10	Q You can answer.	15:48:33
11	MR. MURPHY: And I'll just object to the	15:48:35
12	overbroad nature of the question, but you can	15:48:36
13	answer to the extent that you know.	15:48:38
14	A The decisions are made within the claims	15:48:40
15	organization structure.	15:48:50
16	Q And is the amount of the reserve set forth	15:48:52
17	in your claims notes? Albeit the ones that we	15:48:56
18	received are blacked out, but is the amount of the	15:49:05
19	reserve in the claims notes?	15:49:08
20	A I don't recall.	15:49:10
21	Q What is the amount of the reserve set for	15:49:10
22	this claim by Beazley?	15:49:15
23	MR. MURPHY: The witness is instructed not	15:49:17
24	to answer.	15:49:19
25	MR. SYLVESTER: I'm sorry?	15:49:20

1 MR. MURPHY: The witness is instructed not
2 to answer. I'm not going to -- you know, that is
3 going to be subject to a court order. I can't
4 permit her to respond to that.

5 We object to that. It's not relevant to
6 the issues that are set forth in the pleadings.
7 It was not specifically requested in the
8 deposition notice. She is not permitted in either
9 her corporate or individual capacity to respond to
10 that question.

11 MR. SYLVESTER: Well, let me ask this
12 predicate question.

13 BY MR. SYLVESTER:

14 Q Do you know, Ms. Ellis, what the amount of
15 the reserve is set for this claim by Beazley?

16 MR. MURPHY: You're free to answer.

17 A Yes.

18 Q And so by the instruction of your counsel,
19 you could answer the question and give me the
20 number of dollars reserved for this claim, but
21 you're not going to because he's instructing you
22 not to answer; is that correct?

23 MR. MURPHY: Objection; compound,
24 overbroad. You can answer to the extent you
25 understand the question.

1	A I'm -- Beazley's following the advice of	15:50:41
2	counsel.	15:50:50
3	Q Okay. So just to wrap up a couple	15:50:50
4	questions from the policy itself, Exhibit 4.	15:50:54
5	MR. SYLVESTER: Harold, can you put	15:50:58
6	Exhibit 4 into the chat box, the Beazley policy at	15:51:00
7	issue?	15:51:03
8	(Exhibit 4 was previously marked for	15:51:03
9	identification and is attached to the transcript.)	15:51:35
10	Q Tell me when you have it open.	15:51:35
11	A Sure. It just popped up. Let me download	15:51:37
12	it again.	15:51:40
13		15:51:41
14	Okay. I have it open.	15:52:02
15	Q Can you turn to the second page that lists	15:52:04
16	the limits of liability for different aspects of	15:52:07
17	the coverage under this policy?	15:52:10
18	A Okay. I'm on Page 2.	15:52:16
19	Q Yes.	15:52:18
20	A Of the document.	15:52:20
21	Q For employee dishonesty, the limit of	15:52:21
22	liability is \$15 million, correct?	15:52:24
23	A Yes, limit per each loss.	15:52:27
24	Q Okay. And there's a \$1 million deductible	15:52:31
25	that's also listed. Is that the limit and the	15:52:34

1 deductible that applies to this claim assuming
2 that it were covered, that that would be the limit
3 of liable for the loss over and above the
4 \$1 million deductible?

15:52:38

15:52:42

15:52:45

15:52:49

5 A Yes, that's the limit for a deductible
6 applicable for the employee dishonesty coverage.

15:52:51

15:52:59

7 Q Okay. And can you see down below it says
8 expense coverage, \$500,000?

15:53:02

15:53:05

9 A Yes.

15:53:07

10 Q And there's no deductible on that,
11 correct?

15:53:08

15:53:12

12 A Yes, that's correct.

15:53:12

13 Q So just hypothetically, if International
14 Paper had a \$20 million loss and had a million
15 dollars of expense in connection with this loss,
16 how much money would be recoverable from Beazley
17 assuming that you agreed with claim was covered?

15:53:13

15:53:22

15:53:29

15:53:31

15:53:33

18 A The -- the limit would be 15 million,
19 assuming that there was a covered loss under the
20 policy.

15:53:37

15:53:48

15:53:50

21 Q Okay. And if they also had incurred a
22 million dollars of expense, would International
23 Paper be able to recover an additional \$500,000
24 for its expense?

15:53:50

15:53:53

15:54:00

15:54:04

25 MR. MURPHY: Objection to the hypothetical

15:54:05

1 nature of the question. You're free to answer. 15:54:07

2 A Well, under the policy, if a loss is 15:54:11

3 covered under more than one insuring agreement, 15:54:35

4 the maximum payable amount under the policy would 15:54:38

5 not exceed the largest single applicable limit of 15:54:41

6 liability. 15:54:44

7 Q So in my hypothetical where there's a 15:54:46

8 \$20 million loss and a million dollars of expense, 15:54:51

9 what's the total amount of limits of coverage that 15:54:54

10 Beazley has available with respect to this -- that 15:54:57

11 loss? 15:55:01

12 MR. MURPHY: Same objection. You can 15:55:03

13 answer. 15:55:04

14 A 15 million. 15:55:05

15 Q Okay. Can you turn to the definitions 15:55:09

16 section of this policy for the definition of 15:55:18

17 discovery, which is on page ending in 022, Bates 15:55:26

18 numbered ending in 022? 15:55:34

19 A Okay. I have it out. 15:55:36

20 Q And this is on page ending 022. It's on 15:55:49

21 Page 3 out of 20 down at the bottom. And it says 15:55:53

22 discovery or discovered means the moment when any 15:55:53

23 member of the controlled group of the insured 15:55:59

24 first becomes aware of facts which would cause a 15:55:59

25 reasonable person to believe that a loss covered 15:56:02

1 by this policy has been or will be incurred even 15:56:04
2 though the exact amount or details of loss may not 15:56:07
3 be known. 15:56:10

4 Do you see that? 15:56:11

5 A Yes, I do. 15:56:12

6 Q Okay. And the control group is who has to 15:56:15
7 discover the loss in order for it to trigger this 15:56:27
8 discovery definition, correct? 15:56:30

9 A Yes. 15:56:34

10 Q And how is control group defined? 15:56:41

11 A It's defined on the same page. 15:56:44

12 Q And what is that definition? 15:56:52

13 A The policy states control group means a 15:56:53
14 general counsel, human resource, internal audit or 15:57:00
15 risk management departments of the insured or 15:57:03
16 their equivalent. 15:57:07

17 Q Okay. And was that definition amended at 15:57:09
18 all in this policy in terms of who constitutes a 15:57:17
19 control group member? And I would direct your 15:57:22
20 attention if you would to page ending 000415 of 15:57:29
21 this policy? 15:57:38

22 A What page number is that of the document? 15:57:39

23 Q Yeah, I'll tell you that in a second. 15:57:41

24 It's 29 of 36. 15:57:43

25 Tell me when you have that definition of 15:58:01

1	amend definition of control group.	15:58:04
2	A I have it open.	15:58:05
3	Q Okay. And you see that it says that	15:58:06
4	control group means the risk manager of the	15:58:10
5	insured or their equivalent?	15:58:12
6	A Yes, I do.	15:58:14
7	Q And that definition supersedes the	15:58:17
8	definition that we just looked at on Page 3 of 20,	15:58:21
9	which is Page 022, right? That definition	15:58:33
10	including the general counsel, human resource,	15:58:36
11	internal audit or risk management, that's no	15:58:39
12	longer valid; it's just the risk manager of the	15:58:42
13	insured or their equivalent that is the control	15:58:49
14	group for purposes of the discovery definition	15:58:51
15	under this policy; is that right?	15:58:57
16	A Yes.	15:58:59
17	Q Okay. So if one wants to determine	15:59:02
18	whether and when the discovery of the alleged	15:59:07
19	employee theft scheme of Jag took place, the	15:59:11
20	discovery is wherever the risk manager of	15:59:15
21	International Paper became aware of facts which	15:59:20
22	would cause a reasonable person to believe that a	15:59:26
23	loss covered by the policy has been or will be	15:59:28
24	incurred even though the exact amount or details	15:59:31
25	of the loss may not be known; is that right?	15:59:34

1	MR. MURPHY: Objection as to form. You	15:59:43
2	can answer.	15:59:45
3	A You were just reading the rest of the	15:59:46
4	discovery language?	15:59:49
5	Q Yes.	15:59:50
6	A Yes, that's correct.	15:59:51
7	MR. MURPHY: Just so you know, John, I'm	16:00:18
8	sure you're aware of it, but we're at four	16:00:20
9	o'clock. Keep in mind we have child care	16:00:24
10	considerations here as well.	16:00:27
11	MR. SYLVESTER: Yeah. I have, like, two	16:00:28
12	questions left.	16:00:30
13	MR. MURPHY: Okay.	16:00:31
14	BY MR. SYLVESTER:	16:00:32
15	Q So does Beazley have any evidence or aware	16:00:32
16	of any information that the risk manager of	16:00:35
17	International Paper was aware of the employee	16:00:40
18	theft scheme involving Jag prior to the inception	16:00:42
19	of this policy on July 1, 2019?	16:00:47
20	A No, not at this time.	16:00:50
21	Q Okay. And then, finally, can you just go	16:00:58
22	to the definition of the word termination -- well,	16:01:00
23	I guess start with the --	16:01:13
24	A What page?	16:01:18
25	Q Yeah.	16:01:19

1	A Of which page?	16:01:20
2	Q I'm looking for the termination clause.	16:01:21
3	Look at Page 18 of 36 of the PDF.	16:01:43
4	A Okay. I have it. I have that open.	16:01:57
5	Q It's numbered in ending in 034. It says	16:02:04
6	this policy shall terminate to any employee as	16:02:10
7	soon as any insured or any member of the control	16:02:13
8	group of the insured not in collusion with the	16:02:15
9	employee acquires knowledge of any unlawful taking	16:02:17
10	of money, securities, or property, or other	16:02:20
11	fraudulent or dishonest act committed by such	16:02:24
12	employee during any term of employment with the	16:02:27
13	insured.	16:02:29
14	And does Beazley have a position as to	16:02:30
15	when this termination of -- with respect to Jag	16:02:35
16	took place, on what date or dates the policy	16:02:43
17	terminated as to Jag which is coverage for	16:02:54
18	employee theft by Jag?	16:02:57
19	MR. MURPHY: Object to form. The witness	16:02:59
20	is instructed not to speculate. This was not	16:03:01
21	clearly identified in the original notice.	16:03:05
22	A I don't -- can you repeat your question?	16:03:17
23	I'm not sure what you're -- what you're asking.	16:03:19
24	Q Yeah. This provision -- I'm just asking	16:03:21
25	whether Beazley has a position as to the	16:03:23

1 application of this provision as to whether and 16:03:26
2 when this policy terminated as to Jag for employee 16:03:28
3 theft? Because it says this policy shall 16:03:31
4 terminate as to any employee as soon as the 16:03:35
5 insured or any member of the control group of the 16:03:37
6 insured not in collusion with the employee 16:03:39
7 acquires knowledge of any unlawful taking of 16:03:41
8 money, securities, or property, or other 16:03:44
9 fraudulent or dishonest act committed by such 16:03:47
10 employee during any term of employment. 16:03:50

11 And it goes on to say that policy shall 16:03:53
12 terminate in its entirety upon the occurrence of 16:03:55
13 any of the following, and this has to do with 16:03:59
14 other matters. 16:04:03

15 But -- not relevant here. I'm just really 16:04:04
16 focused on Section one, and that is does Beazley 16:04:09
17 have a position as to when the employee theft 16:04:13
18 coverage for Jag has an employee terminated based 16:04:16
19 on the facts as known to them through its 16:04:20
20 investigation? 16:04:24

21 MR. MURPHY: Same objection. 16:04:28

22 A As stated previously, Beazley's not made a 16:04:29
23 determination with respect to the alleged employee 16:04:39
24 dishonesty. 16:04:41

25 Q Okay. At this point, I have no further 16:04:43

1 questions. We reserve our rights to recall the 16:04:51
2 witness with regard to questions for which 16:04:55
3 instructions not to answer were given and/or any 16:05:01
4 other basis. 16:05:03

5 We would request copies -- or a copy 16:05:03
6 produced of the StoneTurn asset investigation, 16:05:07
7 which I believe was fairly encompassed within our 16:05:11
8 document request and to which I don't believe it 16:05:14
9 has been produced, and we can follow up in writing 16:05:17
10 with that. 16:05:22

11 But at this point, I thank the witness for 16:05:22
12 her time and attention, and I'll adjourn unless, 16:05:25
13 Gene, you have any questions of the witness. 16:05:29

14 MR. MURPHY: No questions. We'll take 16:05:31
15 your request under advisement. At this point, we 16:05:33
16 consider the deposition concluded and fully 16:05:41
17 reserve these rights to the extent that there's 16:05:44
18 any dispute in that regard. 16:05:46

19 Thank you. Nothing further. 16:05:48

20 MR. SYLVESTER: Thanks. Let me just ask 16:05:54
21 the court reporter if we could have a rough draft 16:05:55
22 within a day, and the normal delivery for the 16:05:59
23 official transcript. 16:05:59

24 COURT REPORTER: Sure. Attorney Murphy,
25 would you like a rough draft as well?

1 MR. MURPHY: Yes, please.

2 COURT REPORTER: And would you like an
3 expedite for the final?

4 MR. MURPHY: What's normal turnaround time
5 for Planet Depos?

6 VIDEOGRAPHER: Do you mind if I read us
7 off the video record really quick?

8 MR. SYLVESTER: Yes.

9 MR. MURPHY: Good idea.

10 VIDEOGRAPHER: This marks the end of the
11 deposition of Pia Ellis. We are going off the
12 record at 4:06 p.m.

13 (Off the record at 4:06 p.m.)
14
15
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22
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25

ACKNOWLEDGMENT OF DEPONENT

I, PIA ELLIS, do hereby acknowledge that
I have read and examined the foregoing testimony,
and the same is a true, correct and complete
transcription of the testimony given by me and any
corrections appear on the attached errata sheet
signed by me.

(DATE)

(SIGNATURE)

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Brooklyn E. Schweitzer, the officer
before whom the foregoing deposition was taken, do
hereby certify that the foregoing transcript is a
true and correct record of the testimony given;
that said testimony was taken by me
stenographically and thereafter reduced to
typewriting under my direction; that reading and
signing was not requested; and that I am neither
counsel for, related to, nor employed by any of
the parties to this case and have no interest,
financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 16th day of
January, 2024. My commission expires: May 20th,
2026.



Brooklyn E. Schweitzer, RPR, CRR

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